International Door, Inc. *and* Local 508, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO. Cases 7–CA–28487, 7–CA–28496(1), and 7–CA–28783

June 28, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On March 2, 1990, Administrative Law Judge Thomas R. Wilks issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.

The judge found that, under the authority of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), a bargaining order is an appropriate remedy in this proceeding. In its exceptions, the Respondent contends, inter alia, that the judge erred in finding its conduct ''outrageous'' and ''pervasive'' under *Gissel* and it argues that it has not even been shown that its conduct was serious enough to fit the second *Gissel* category for the issuance of a bargaining order.[2] In addition, the Respondent contends there has been substantial turnover in its work force that should preclude a *Gissel* bargaining order. We reject these various arguments raised by the Respondent.

In rejecting these arguments, and in affirming the judge's issuance of a bargaining order, we first find it unnecessary to determine whether the Respondent's unfair labor practices are within the first or second category for the issuance of bargaining orders as delineated by the *Gissel* Court for they are, regardless of category, quite clearly sufficient to warrant a bargaining order. Thus, we note that the Union had obtained a card majority of 9 employees in a unit of 13 by September 23, 1988, and made a demand for recognition on the Respondent which was refused on September 26, 1988. The Respondent then immediately began a series of unfair labor practices designed to weaken and destroy the employees' support for the Union. In reciting the litany of unfair labor practices in which the Respondent engaged, it is well to remember that, with one exception, these unfair labor practices were all committed by either the Respondent's president, John Kaounas, or its vice president, Gus Kaounas. John and Gus Kaounas are brothers and are the joint owners of the Respondent. John Kaounas' unfair labor practices were more extensive than his brother's and they began the very day the Respondent received the demand for recognition. John Kaounas that day convened an employee meeting at which he (1) expressed his adamant opposition to the union representation of the employees and implied the futility of efforts for union representation because he would not allow it; (2) threatened employees with more onerous work rules within the context of a threat to effect a more rigidly disciplined work environment in the event the employees chose representation by a union; (3) made an implied threat of plant closure if the employees chose union representation; and (4) peremptorily discharged three employees (who were offered reinstatement the next day) for union-related reasons. Then, at another employee meeting, on September 28, John Kaounas again conveyed to employees the futility of union representation by telling them that the Respondent would never permit such representation and further threatened to restrict production in order to limit available work only to nonunit persons. Kaounas further threatened business closure if the employees chose the Union. After that meeting, one of the employee card signers came to John Kaounas and told him of the various card signers. Kaounas then convened a second meeting on September 28, but this one of card signers only. The judge found that Kaounas there repeatedly demanded a ''public confession of union representation support'' and successfully solicited the employees to repudiate and withdraw their previously signed authorization cards. Further, at this meeting, the Respondent's product shop foreman Norwood unlawfully interrogated the employees by demanding public disclosure of their ''ringleader.'' In response to these actions of the Respondent, the Union filed unfair labor practice charges but the Respondent continued its barrage of unfair labor practices. The judge found that, in mid-November, the Respondent promised employees Wells and Cross increased benefits and wages if the employees rejected the Union; threatened the employees with dis-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that at sec. III, ''Complaint Allegation Analysis,'' C, par 5, the first sentence should state in relevant part, ''and by its unilateral implementation of work rules in December 1988 and its discharge of John Cross insofar as it was in pursuance of those rules.''

[2] In *Gissel*, the Court identified two categories of cases in which a bargaining order would be appropriate. The first involves ''exceptional cases'' marked by unfair labor practices that are so ''outrageous'' and ''pervasive'' that traditional remedies cannot erase their coercive effect with the result that a fair election is rendered impossible. The second category involves ''less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes.'' The Court stated that in the latter situation a bargaining order should issue where the Board finds that ''the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order . . . .'' Id. at 613, 614–615.

charge because of the employees' union activity; and coercively interrogated the employees by demanding to know why they were instigating union organizing activities. The judge also found that, in the fall and winter of 1988, the Respondent unlawfully told the employees that, other than new employees, the employees would not receive wage increases and would not be granted discretionary merit raise reviews to which past practice and policy entitled them because of the demand for union recognition and the then-pending Board proceedings. Then, in December 1988, the Respondent distributed an employee handbook in direct response to the employees' union activities. The judge found that it and a newly instituted plant confinement rule violated the Act. And, in January 1989, the Respondent fired employee Cross in violation of Section 8(a)(3) and (1) of the Act and further violated the Act through Gus Kaounas' threat to Cross to do him obscene bodily harm for seeking the assistance of the Union and the Board.

The mere recitation of these myriad unfair labor practices, which commenced so rapidly after the Union's demand for recognition, puts into grave doubt the Respondent's assertion that ''even if proven, [its unfair labor practices] have not precluded the possibility of a fair election.'' Thus, we note that among its unfair labor practices, the Respondent committed a number of violations of an extremely serious nature. In *Koons Ford of Annapolis*, 282 NLRB 506, 508 (1986), the Board indicated (in words particularly apt here):

> In determining whether a bargaining order is appropriate, in addition to examining the severity of the violations committed, the Board also examines the present effects of the coercive unfair labor practices that would prevent the holding of a fair election.
>
> It is highly significant that many of the violations present here were of an extremely serious nature. Both the courts and the Board have long recognized that threats of job loss (i.e., plant closure, discharge, and layoff) because of union activity are among the most flagrant interferences with Section 7 rights and are more likely to destroy election conditions for a lengthier period of time than other unfair labor practices. Indeed, the natural and likely result of the threats found here was to reinforce the employees' fear that they would lose employment if they persisted in their union activity. [Footnotes omitted.]

One of the Respondent's frequent unfair labor practices was the threat of plant closure. The Sixth Circuit in *Indiana Cal-Pro, Inc. v. NLRB*, 863 F.2d 1292, 1301–1302 (1988), enfg. 287 NLRB 796 (1987), indicated that ''[c]ourts have repeatedly held that in view of an employee's natural interest in continued employment, threats of plant closure are 'among the most flagrant' of unfair labor practices,'' citing, inter alia, *Gissel*, 395 U.S. at 611 fn. 31.

But, in issuing the bargaining order here, we have not looked solely to the quality and number of the unfair labor practices that the Respondent committed. We have also considered the small size of the unit involved. Thus, the judge found that the Respondent employed an average of about 12–14 persons in unit work and he found 13 persons in the unit at the time of the demand for recognition. We have also considered that these unfair labor practices were committed by the Respondent's top-level management rather than lower-level supervisors. Given the entirety of the circumstances here, we conclude a bargaining order is fully warranted for the unfair labor practices we have found.[3]

The Respondent argues, however, that the Board should consider whether substantial turnover of employees in the bargaining unit has sufficiently cured the effect of any employer misconduct and allows for the holding of a fair election. The Board has specifically held, however, that ''the validity of a bargaining order depends on an evaluation of the situation as of the time the unfair labor practices were committed . . . .''[4] Thus, ''the evidence the Respondent proffers regarding changes of this nature [i.e., a change in the composition of the unit] . . . [is] irrelevant . . . when assessing the propriety of issuing a *Gissel* bargaining order [citations omitted].''[5]

Even assuming the relevance of the evidence of turnover that the Respondent relies on, we find this evidence would not remove the basis for issuing a bargaining order for the following reasons.[6] First, because the misconduct in this case was committed by the Respondent's highest officials and was directed at virtually every employee in the bargaining unit, we find it foreseeable that new employees would learn of the past practices and be deterred from seeking union rep-

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[3] See *Indiana Cal-Pro, Inc. v. NLRB*, supra, which had many of the same unfair labor practices as involved here though not nearly as many in number.

[4] See *Highland Plastics*, 256 NLRB 146, 147 (1981).

[5] *Salvation Army Residence*, 293 NLRB 944, 945 (1989), enfd. mem. 923 F.2d 846 (2d Cir. 1990).

[6] At the outset, we note that the Respondent argues that, by the time that Cross was unlawfully discharged in January 1989, the entire bargaining unit had turned over. The record does not conclusively support that assertion. There was testimony that, because of significant turnover, the Respondent might hire 150–200 employees each year for the unit positions. There was also evidence that by time of the hearing at least four card signers had voluntarily left the Respondent's employ. The judge characterized the situation by finding that in January 1989 ''through a combination of fortuitous resignations and its unlawful discharge of Cross, [the Respondent had] achieved the reduction of known union card signers to a comfortably safe minority.'' Although the Respondent asserts that ''Cross admitted that by January 5, 1989 he was the last employee who had supported the Union,'' Cross' testimony shows he then told the Kaounas brothers that they ''want[ed] me out of here because I'm about the last one.'' Thus, we do not find that the record shows that there was 100 percent bargaining unit turnover when Cross was fired but the record does show that the Respondent experiences significant turnover in its bargaining unit positions.

resentation.[7] Second, the Kaounas brothers are still in charge of the Respondent's operations. The breadth of their unfair labor practices shows that the Respondent, through them, is deeply committed to its antiunion position and that it is not likely to retreat from such position.[8] In short, their conduct demonstrates that they are likely to renew their unlawful tactics among current or future employees to keep out the Union or any other labor organization as an employee bargaining representative. Moreover, the Kaounas brothers' continued presence ''can serve only to reinforce in the minds of the employees the lingering effects of the Respondent's violations.''[9] Additionally, we note that the violations that were committed were ''numerous and pervasive in nature and that many of them were 'hallmark' violations, including threats of discharge and numerous threats of plant closure, which are 'among the most flagrant' of unfair labor practices.''[10]

For all the above reasons, we agree with the judge that a *Gissel* bargaining order is warranted here.[10] We also find that the Respondent's unfair labor practices warrant a broad cease-and-desist order. *Hickmott Foods*, 242 NLRB 1357 (1979). We shall modify the judge's recommended Order accordingly.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, International Door, Inc., Canton, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(m).

''(m) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Substitute the attached notice for that of the administrative law judge.

[7] See *Amazing Stores*, 289 NLRB 163 fn. 2 (1988), enfd. 887 F.2d 328, 331 (D.C. Cir. 1989).

[8] *Salvation Army*, supra; *Amazing Stores v. NLRB*, supra, 887 F.2d at 331.

[9] *Salvation Army*, supra.

[10] *Action Auto Stores*, 298 NLRB 875, 875–876 (1990) (quoting *Indiana Cal-Pro, Inc. v. NLRB*, supra at 1301–1302).

[11] The Respondent argues that Cross' January 5, 1989 discharge is vital to the General Counsel's seeking a bargaining order and that significant employee turnover had occurred before his discharge. It appears to argue that already-departed employees could thus not have been affected by his discharge and that the unfair labor practices that they earlier were exposed to were insufficient to warrant a bargaining order. We note, however, that in light of the Respondent's extensive unfair labor practices an order to bargain would have been appropriate even in the absence of Cross' firing. See, e.g., *Indiana Cal-Pro, Inc. v. NLRB*, supra.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT express to our employees the futility of union representation efforts by telling them we will in no way permit union representation.

WE WILL NOT threaten employees with more onerous work rules, a more strict enforcement of preexisting rules, or a more rigidly disciplined work environment if they choose union representation, nor effectuate such threats to discourage their union activities and desires for union representation.

WE WILL NOT threaten employees with plant closure if they choose union representation.

WE WILL NOT threaten to reduce production and limit available production work to persons not in the appropriate collective-bargaining unit, and thus cause layoffs.

WE WILL NOT coerce employees to repudiate and withdraw their authorizations for union representation.

WE WILL NOT coercively interrogate employees as to their own or other employees' union activities or union support.

WE WILL NOT discharge employees by discriminatory enforcement of work rules or by enforcement of unlawfully promulgated work rules or because of their union activities and sympathies or because of other concerted activities protected by the Act in order to discourage such activities by our employees.

WE WILL NOT promise to employees increased benefits and wages if they reject union representation.

WE WILL NOT threaten to withhold merit wage increases from employees that would otherwise have been granted were it not for the pendency of a demand for union recognition and pendency of related Board proceedings.

WE WILL NOT refuse to review employees' eligibility for merit raises, on an employee request according to past practice, because of the pendency of a de-

mand for union recognition and pendency of related Board proceedings.

WE WILL NOT threaten employees with bodily injury because they sought the assistance of a labor organization and the process of the Board.

WE WILL NOT refuse to recognize and bargain with our employees' designated bargaining agent for the appropriate unit of employees nor unilaterally institute new work rules nor unilaterally effectuate stricter enforcement of old work rules, without notice and bargaining opportunity to their bargaining agent.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with Local 508, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO as the exclusive bargaining representative of employees in the appropriate unit and, if agreement is reached as to wages, hours, and other terms and conditions of employment, embody the understanding in a signed written document. The appropriate unit is:

> All full-time and regular part-time production and maintenance employees, including truck drivers, employed by us at our plant located at 8001 Ronda, Canton, Michigan; but excluding electricians, office clerical employees, guards and supervisors as defined in the Act.

WE WILL rescind new work rules unilaterally implemented in December 1988, and return the status quo ante with respect to the enforcement of old work rules and the manner of discipline for violation of old rules prior to September 26, 1988.

WE WILL immediately reinstate our past practice of reviewing an employee's eligibility for a merit wage increase, when the employee requests one in accordance with past practice, and grant such wage raise request, if deemed meritorious, after bargaining with the above-named Union as to the amount of each wage raise, and grant retroactive increases to John Cross and any other employee whom it would have otherwise given raises on a merit review had we not refused that employee's request for a merit review because of the pendency of a demand for union recognition and Board proceedings.

WE WILL offer John Cross immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make whole John Cross, Tony Gargarilla, and Ron Kinney for any loss of earnings suffered as a result of our unlawful conduct, with interest.

WE WILL notify each of them that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

INTERNATIONAL DOOR, INC.

John Ciaramitaro, Esq., for the General Counsel.
Lois Blaesing, Esq., of Birmingham, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

THOMAS R. WILKS, Administrative Law Judge. The trial of the issues this consolidated proceeding was held before me in Detroit, Michigan, on April 10, 11, and 12, 1989, pursuant to unfair labor practices filed and/or amended according to numerical sequence on September 27 and 29, 1988, January 9 and February 8, 1989, by Local 508, International Association of Bridge, Structural and Ornamental Iron Workers AFL–CIO (the Union), against International Door, Inc. (Respondent), and pursuant to complaints or amended complaints and orders of consolidation in those cases issued by the Board's Regional Director on November 1, 1988, and February 8 and March 2, 1989.

The Respondent is alleged by those complaints to have committed unfair labor practices consisting of multitudinous acts of interference with employee 8(a)(1) rights, various discriminatory acts violative of Section 8(a)(1) and (3) and a refusal to recognize and bargain with the Union as employee majority bargaining agent designated by employee executed authorization cards in violation of Section 8(a)(5) of the Act.

Respondent timely filed answers to the complaints by which it denied the Union's designated majority bargaining agent status and denied the commission of the unfair labor practices.

The parties were given full opportunity to introduce relevant, material evidence, to examine and cross-examine witnesses, and to argue orally. The parties elected to file posttrial briefs. The General Counsel's memorandum brief and Respondent's 75-page posttrial brief were both received on July 5, 1989.

On the entire record and briefs, and my observation of the witnesses' demeanor, I make the following

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent is, and has been at all times material, a corporation duly organized under and existing by virtue of the laws of the State of Michigan where it has maintained its principal office and place of business at 8001 Ronda in the City of Canton, herein called the Canton facility, and is engaged in the manufacture, nonretail sale, and distribution of industrial doors and related products. Respondent's plant located in Canton, Michigan, is the only facility involved in this proceeding. During a yearly period which is representative of its operations during all times material hereto, Respondent, in the course and conduct of its business operations, purchased and cause to be transported and delivered to its Canton plant, goods and materials valued in excess of

$50,000, which were transported and delivered to its plant in Canton, Michigan, directly from points located outside the State of Michigan.

It is admitted, and I find, that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

It is admitted, and I find that, the Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. UNFAIR LABOR PRACTICES

Respondent was formed in 1974 by the brothers, John and Gus Kaounas, president in charge of general administration and vice president in charge of production, respectively, and joint owners. At two prior locations, initially under a different name and finally at the Canton facility, it has employed an average of about 12–14 persons in production work in its plant, 6 persons in office duties and an indeterminate number of delivery and installation employees, the last of whom have been represented for several years by an unidentified local of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO. The production employees were unrepresented and were the subject of the Union's organizing activities in late 1988. The record is silent as to whether Respondent's past bargaining relationship with the installer's bargaining agent was congenial or hostile. No evidence was introduced of past union animus.

In addition to the brothers Kaounas, Respondent's supervisory hierarchy is supplemented by Production Shop Foreman Roger Norwood, an admitted supervisor and agent as defined by the Act. Employed in the plant also is John Pappas, a skilled electrician who is subordinate to an unidentified plant engineer or directly to Gus Kaounas, and who works independently and in isolation from production workers. Jimmy Kaounas, 16-year-old son of Gus Kaounas, was also employed as part-time electrician.

The parties stipulated the following as an appropriate collective-bargaining unit:

> all full-time and regular part-time production and maintenance employees, inclulding truck drivers employed by the employer at its plant vacated at 8001 Ronda, Canton, Michigan, but excluding electricians, office clerical employees, guards and supervisors as defined in the Act.

At the end of September 1988, employed in the aforesaid unit were Mike Bazman, John Cross, Richard Fiddie, Tony Gargarilla, Ron Kinney, Nick Kaounas (brother of John and Gus), Brian Kutz, David Privett, Joey Rosbury, Terry Stoneburgh, Charles Wells, and two unidentified helpers, according to unrefuted testimony of General Counsel's witnesses. It is also undisputed that although new unit employees start out as unskilled helpers and are subsequently trained to more skilled tasks as assembly and welding there are no formal job classifications within the unit.

A. *Union Organizing*

On the telephone invitation of an unidentified employee, a union representative, George Clark, testified that at a postwork shift meeting at a public park, he discussed union representation with and obtained executed union representation authorization cards from seven unit employees, i.e., Cross Wells, Stoneburgh, Fiddie, Kinney, Kutz, and Privett. These cards were adduced into evidence, without objection, upon the identification and authentication testimony of Clark, Wells, Stoneburgh, and Cross. Respondent does not dispute the authenticity of those union cards but in the brief makes reference to testimonial admission of some beer consumption at the meeting. There is no evidence of actual intoxication of any card signer at the time of card execution nor any other mental dysfunction.

John Cross, a fitter-welder of 3 years' employment, testified that he first became aware of union organizing efforts ''somewhere in the middle of'' September 1988 when he had heard that Fiddie had contacted a union agent. Cross testified that Wells notified him of the September 23 meeting with Clark and that the following sequence of events occurred. Cross drove Wells to the latter's home where they encountered Mike Bazman who had not attended the meeting. There, on Cross' solicitation, Bazman read and signed an authorization card which subsequently was placed in Clark's custody. Cross admitted that prior to signing the card, Bazman had consumed ''a few'' beers. Whether he was inebriated is not established.

Also after the meeting, according to the testimony of Terry Stoneburgh, a hand saw operator-welder, he met privately with unit employee Joey Rosbury at his home where the latter, also on solicitation, read and executed an authorization card which subsequently was delivered to Clark. Bazman's and Rosbury's cards were received into evidence without objection and were authenticated by Cross and Stoneburgh. There is no challenge as to the authenticity nor validity of these two cards, except Respondent's unfounded suggestion that Bazman had been inebriated.

All nine cards were properly authenticated and clearly facially designate the Union as bargaining agent. Aside from the unfounded suggestions of inebriation, there is no other challenge to their validity nor to the General Counsel's claim that as of Friday evening, September 23, 1988, a majority of unit employees had, by card execution, designated the Union as exclusive collective-bargaining agent.

On behalf of the Union, Clark and his associate, Alan Craig, in a personal mid-morning visit with John Kaounas at the plant office, claimed that a majority of unit employees designated the Union as bargaining agent, and they therefore asked for Respondent recognition of such as a fact and for commencement of bargaining. According to Clark, John Kaounas asked and was refused information as to the specific number of employees who did ''sign up'' for the Union and then stated, ''So the workers wanted a union. No way. No way.''

According to Clark, nothing else was said. Craig did not testify. According to John Kaounas, when faced with the majority status claim which was explicitly stated to be in the form of authorization cards, he asked for ''proofs'' of such claim, including ''names'' of employees but was refused any information. Kaounas testified that he found such claim

''hard for me to believe [and] it's kind of a little shocking here.'' He testified that he responded:

> Well, somebody ought to tell me something. You came in my office. You're telling me you have the majority of the people in the back who have a union, and you're ready to sit and bargain. I don't know anything about it. I'd like to have some time. I'll talk to the people in the back or somebody ought [sic] will tell me, and I'll get back with you gentlemen.

In cross-examination, John Kaounas admitted that he wanted the specific names of the card signers and that he had immediately decided to ascertain the identity of union cards signers. He testified that the first step he took was to question Norwood, who then reported rumors of union activities of unnamed employees. Kaounas explained that he decided to hold a meeting with all the production employees then working after lunch in the production area of the plant.

On the same day, Clark filed the Union's petition for certification of representative for the unit employees in Case 17–RC–18792.

B. *September 26 Employee Meeting*

Present at the plant meeting were all the production employees, Norwood and the brothers Kaounas. John Kaounas admittedly summoned the employees, alluded to Clark's claims and questioned the group as to their support of the Union. However, significant details of the discussion are in dispute as set forth in General Counsel witnesses' testimony of Cross, Wells, Gargarilla, and Stoneburgh and that of Respondent witnesses John and Gus Kaounas, the last of which was in the form of categorical denials elicited by leading questions and given without context of the witnesses' own recollection of what was said. Therefore, Gus Kaounas' testimony on this point was the least meaningful and of little probative value, much less of corroborative value. In cross-examination, he recalled only a fragment of the discussion.

Cross testified that John Kaounas acknowledges that a ''handful'' of employees were seeking union representation which would occur ''no way'' and that it would result in excessive costs and would not be beneficial. After some hesitation, Cross hesitantly testified further that John Kaounas also stated: ''I might even have to shut the doors.'' He testified that Gus Kaounas then stated the same thing. When questioned by the court as to who actually referred to plant closure, he testified that it was Gus Kaounas who made such reference, not John Kaounas. Wells testified to similar introductory remarks by John Kaounas except that he made no reference to a claim of excessive costs, nor to lack of benefit in union representation nor to plant closure. Wells, however, testified that John Kaounas stated that there was ''no way the union was going to come in, that 'they'd' have drugs and alcohol tests, and that most of us would be fired because of those tests.''

In cross-examination, Wells and Stoneburgh corroborated John Kaounas' testimony that he had explained to the employees that union agents had visited him and had claimed employee designation as bargaining representative. Wells did not recall but Stoneburgh did testify, as John Kaounas testified thereafter, that Kaounas stated that he wanted to ascertain the truth of that claim directly from the assembled employees by open public declaration to Kaounas and that he waited on them for a response that was not forthcoming. In his cross-examination, Cross denied that Kaounas had referred to the union agent's recognition demand or majority claim or that Kaounas asked the employees to declare their union representation desires. Cross did, however, now recall in cross-examination that Kaounas also stated that three specific competitors had gone bankrupt after having recognized a union because they had lost the ability ''to compete in the market place.''

On direct examination, except when the meeting turned to the subject of timeclock rules, to be discussed hereafter, Gargarilla had no recollection of what was stated at the meeting which he, unlike all others, placed as occurring after the end of the work shift. On cross-examination, Gargarilla did recall that there was indeed some reference to drug testing, but that it was in fact made by a newly hired employee who volunteered his opinions on union representation based on prior employment. On this point he was certain in his his demeanor. He also recalled John Kaounas made some unspecified reference to two competitors who had gone bankrupt after union recognition.

Stoneburgh's direct examination revealed the poorest, most confused and thus most unreliable recollection of what turned out to be the first of three successive September employee meetings with the Kaounas brothers. As will be discussed below, two more employee meetings were held by Kaounas on September 28. Stoneburgh testified that 1 or 2 ''weeks'' prior to that date. John and Gus Kaounas had ''harassed us all the time'' about the Union and both had stated in an undisclosed context that the Union was ''no good'' for the employees, that it would ''bring [the employees] down,'' that there ''would be no periodic raises,'' that there was also said, ''something to do with benefits,'' and that ''there was no benefits until they found out what the Union was going to do.'' It is undisputed that Respondent did not have a policy of granting raises to non-newly hired employees according to a set time schedule. Thus there had been no periodic raise policy, and such a threat could not have been made.

The most fluent, detailed exposition of what was said at the September 26 meeting prior to the discussion of timeclock rules was given by John Kaounas as follows: After he had explained Clark's bargaining requests and assertions of majority status, he asked the assembled I employees to reveal to him, and in front of all assembled, whether or not they each desired union representation in a manner clearly indicating he wanted a response. There was no response. John Kaounas admitted that it was his fixed intention to keep trying to discover the identity of card signers by open public declarations, however, as his sole means of verification of Clark's claim. Third party verification or secret balloting or other private polling was not considered.

John Kaounas then told the assembled employees, as they contemplated his interrogation, that two named competitors had experienced business failures ''because of the Union'' after having recognized a union as employee bargaining agent. (Kaounas testified that he made this statement at both of two subsequent meetings held within the next 2 days. Then he testified that it was also said at the first of three such meetings with employees.) Although John Kaounas testified that he based his information on newspaper accounts

and conversations with representatives of the failed competitors, he gave no further factual exposition to the assembled employees beyond the repeated stark statement of that chronology, i.e., recognition—bargaining—consequent business failure because of the Union. Kaounas himself did not refer to ''market place competition.'' Also, he told the employees that if they were represented by the Union, they will pay union dues. When asked whether he spoke of any other consequences, he testified:

> I said it quite a few times. I said, guys, I want you to understand whoever is involved, I'm not really trying to find out why you want a union or why you don't want a union, I'm only trying to find out if it's true that these people walked in my office [said to me]. If somebody admits it, there will be no harm done. You have the right to put a union in. And if you wish to put a union in, go ahead and put a union in. But it will be nobody loses his job, nobody gets mad.

Despite this testimony regarding assurances, which was not explicitly contradicted in rebuttal examination of General Counsel's witnesses, it was preceded by the allusion to business failure and, admittedly, immediately followed by Kaounas' statement to the group that if they do choose union representation, Respondent will ''have to *really* be strict with the rules.'' He stated that neither the individual employees nor Respondent will be entitled to make unfettered decisions but will be compelled to obtain agreement of the third party union, that ''we have to obey the rules more'' and to resort to formal grievance procedures, that ''it ill create hardship between management and the workers'' in the form of distraction and burdensome paperwork and ''arguing at each other,'' and that formal records will be maintained of employee work performance and behavior in consequence of a formal grievance mechanism.

John Kaounas' cross-examination was marred by argumentative banter with counsel, hostility, evasions, calculations as to the impact of his answers, a gross lack of spontaneity, attempted retractions, and disingenuous, unconvincing claims of inability to understand parts of his pretrial affidavit, despite an earlier demonstration that he clearly understood it. In the midst of the tortuous testimony at one point or another, John Kaounas admitted that prior to September 26, Respondent had maintained a casual, flexible, informal relationship where plant rules, if any, were discriminately enforced within the context of the occasion, free of written memorialization and violations were often overlooked. In contradiction of an earlier denial, Kaounas admitted that he told the employees that if they obtained union representation, plant rules would be instituted and enforced inflexibly and indiscriminately. He admitted that in his pretrial affidavit he had testified that immediately thereafter, he cited as an example of a prior rule that sometimes was observed and sometimes not observed by employees who sometimes were and sometimes were not disciplined for violation, was that requiring employees to timeclock register their plant exist and return during the unpaid 12:30 to 1 p.m. lunch period. He further admitted having disclosed to the Board agent a past practice of toleration of ''lots of employees mistakes and problems.''

Within the foregoing context and preceding remarks, the reader's attention is now directed to the subject of timeclock rules as it arose in the meeting of September 26. Immediately on advising the employees that, if unionized Respondent would be ''really strict with the rules,'' John Kaounas admittedly singled out John Cross. Cross testified credibly, without contradiction and consistent with John Kaounas' own testimonial admissions and with corroboration, that John Kaounas looked around the room, fixed his eyes on Cross and said, ''So you want to play by the rules, we'll play by the rules.'' Kaounas then asked whether Cross had left the plant during lunch and, if so, had he punched the timeclock. According to John Kaounas, contrary to all employee testimony, he stated to the employees there was a prior plant rule against departing the plant at lunchtime. According to the testimony of all employees, Kaounas did not refer to lunchtime plant departure as misconduct per se, did not make it an issue, but rather explicated only the failure to punch the timeclock at lunchtime as a violation of plant rules. They all testified, with varying degrees of frequency, to their own past experiences of not only having departed the plant for lunch but doing so without having punched out or in and without having been disciplined. It is clear from the closeness of the area, the numbers involved and John Kaounas' own testimonial admission in cross-examination, that such conduct not only occurred but was well known to Respondent and tolerated.

John Kaounas' contrary testimony in his direct examination as to past enforcement of a no-departure rule is therefore also discredited. He and Gus Kaounas had testified variously as to the imperative need to prevent any workday departure. Yet he had testified that the timeclock rule had nothing to do with the plant departure rule and that the appropriate discipline for lunchtime departure without timeclock entry when the employee is not expected to be working is 1 or more days of suspension, but that departure during actual scheduled worktime which amounted in effect to thievery of company time warranted only a docking of one-half-hour pay. Kaounas attempted to explain this patently anomalous disparity of discipline by suggesting that lunch departure resulted in alcohol or drug consumption a distance from the plant, but worktime departure which made possible similar behavior occurred generally in the plant parking lot where it could more easily be observed and controlled. Yet no rule nor the enforcement of any rule had ever been restricted or modified by the locus of the departed employee. Kaounas' labored, unsatisfactory explanation was only offered on the court's insistence for some kind of explanation Kaounas' demeanor was as unconvincing as was the cogency of his response.

In view of the lack of apparent bias of disinterested former employee witnesses, I find their mutually corroborated testimony, which is in accord with John Kaounas' testimonial and pretrial admissions, to be compelling and convincing with respect to the issue of the nature of the rule violation discussed by John Kaounas on June 26, i.e., lunchtime failure to punch the timeclock. I further find that upon acknowledgment of such conduct, Cross then Kinney and then Gargarilla were peremptorily and explicitly discharged at that meeting. At that meeting Kutz also acknowledged the same alleged misconduct but was pardoned by Kaounas as a new employee ''unfamiliar'' with the alleged rules. Kaounas' testimony that he merely suspended the employees is also dis-

credited in view of his credibility deficiency noted above and his particularly evasive and unconvincing demeanor regarding the nature of the letters which thereafter issued to all discharged employees which directed them to return to work as of 8 a.m. Wednesday, September 28. Not only do those letters constitute an unprecedented form of recordation of discipline of any nature memorialized in the individuals' files, they also on their face refer to the alleged rule violated as ''leaving the premises . . . without punching out'' not for the departure *per se.*

When told that he and others were discharged at the September 26 meeting, Cross and Wells challenged John Kaounas, and protested that the only written relevant rule posted at the timeclock provided for a penalty of one-half-hour docking of pay for failure to punch out when leaving the premises, and they proceeded to lead Kaounas to the posted rule and to futilely argue the point.

In his testimony, John Kaounas attempted to characterize the employees' protest as a twisted misinterpretation of a preexisting rule well known to them which forbade any plant departure during the workday under penalty of suspension. As noted above, such testimony is disingenuous and not credible insofar as it suggests past enforcement by suspension with respect to the lunch period within the meaning of the posted pay docking rule. Gus Kaounas' testimony on the preexistence of a rule prohibiting all plant departures during the workday inclusive of the lunch period is contradictory, inconsistent and, at the very least, confused. At one point he testified that, prior to union activity, if an employee decided to take lunch outside the plant, he was merely obliged to punch the timeclock. At another point he testified that employees did not always comply with that obligation. At another point he testified that before September 26, lunchtime plant departure was subject to his explicit permission but that Cross had often asked for and received this permission, notwithstanding his and John Kaounas' other testimony of the imperative nature of absolute compliance with the rule against any departure, i.e., to prevent thievery of plant property and the imbibing of alcohol and drugs and socialization between employees with girlfriends and wives on the plant parking lots and that Cross was identified in Respondent's opinion as a lunchtime drug and alcohol abuser.

C. *Individual Conversations September 27*

Wells was employed by Respondent from 1986 until January 2, 1989, when he terminated his employment under circumstances not shown to have induced in him any anti-Respondent bias. Although characterized in Respondent's brief as a friend of Cross and thus, as such, presumably willing to perjure himself support any aspect of the case favorable to Cross, I found him to be a dispassionate witness, spontaneous and cooperative in cross-examination where he conceded several significant factual points favorable to Respondent. I find insufficient testimony on which to conclude the extent of the kind of bias Respondent suggests. I conclude that Wells is a credible witness and much more so than either John or Gus Kaounas. I conclude that any credibility deficiency of Wells is due to a failure or confusion in powers of recollection as exhibited by the other unbiased witnesses no longer employed by Respondent, as revealed by their description of the September 26 meeting which in fact they confused with subsequent meetings and conversations.

On September 27, the day when Cross, Gargarilla and Kinney were still not recalled and when John Kaounas' remarks of the day before were still echoing in the employees' consciousness, Gus Kaounas came on Rosbury and Wells who were on the rear end of a trailer while eating lunch out in the parking lot during lunchtime where they sat together. Wells' testimony that a conversation occurred and, as to the substance of it, was not contradicted by Gus Kaounas except for ineffectual, unconvincing, monosyllabic denials elicited by Respondent counsel's leading questions as to whether either Kaounas brother threatened employees. Since Kaounas did not deny that such a conversation occurred and because he kept silent as to what actually was said, I credit Wells as to the details of their conversation. I find that the first remarkable thing about this conversation, uncommented on in the briefs, is that neither Wells nor Rosbury was admonished for being found outside the plant during lunchtime, only 1 day when employees were discharged not merely for timeclock entry failure but allegedly for the lunchtime departure itself. This incident further underlines Respondent's lack of credibility as to the preexistence and rigorous enforcement of a lunchtime no-plant departure rule prior to September 26, as well as the proffered reason for the September 26 discharge.

The second significance of this encounter is that I find that when he approached the employees, Gus Kaounas, while making no reference to their presence outside the plant, rather demanded Rosbury explain how he could be friends with Wells. When he received no response, Kaounas turned to Wells and asked him why he was trying to hurt his business and stated that the Union would not gain anything for the employees but they instead would ''get less if the Union came in,'' and that the ''ones that had joined in, that started the Union wouldn't be around to be able to enjoy it.'' Without further explanation, the conversation terminated. This statement clearly implied retribution loss of present level of benefits on unionization. The context of this case places the prediction of employment loss for union sympathizers as having occurred the day after three employees were precipitously discharged pursuant to retaliatory enforcement of a previously nonenforced rule. Thus the reasonable interpretation of the prediction is that union card signers will be quickly discharged. This conduct by Gus Kaounas was not alleged in the complaint, but it does evidence Respondent's union animus.

D. *September 28 Meetings*

By letter dated and mailed on September 26, 1988, addressed to Respondent and signed by Clark, the Union demanded recognition and bargaining for unit employees. The letter was received by John Kaounas the next day, September 27, which is the day that the discharges were, in effect, rescinded and the dischargees reinstated as of Wednesday 28. On September 28, Kaounas, by letter of same date, rejected the recognition request.

Of least probative value concerning the events of September 28 is the testimony of Gus Kaounas which eventually consists of a series of cryptic denials elicited by leading questions concerning certain statements alleged to have been made by his brother or himself. Moreover, he revealed that his recollection was so poor that in cross-examination he could not even recall that there were two meetings on that date, despite his affirmative response to Respondent's coun-

sel in direct examination as to whether he was present at all three meetings. In cross-examination, his recollection of what was said was fragmentary and very limited. Further indicative of his poor credibility was his testimony that the organizational attempt did not ''bother'' him and that he did not speak publicly on the subject at these meetings, whereas John Kaounas testified that his brother Gus, possibly during the meeting if not afterward, accused the employees of ''going behind his back'' with respect to their union activities.

The employees' testimony of the first meeting on September 28 and, to a large extent, the second meeting on that day is like their recollection of the meeting of September 26—selective and not entirely mutually corroborated.

The only recollection of any events on September 28 in Gargarilla's testimony concerns an uncontradicted, context-free conversation with Norwood at the end of the day wherein the admitted supervisor told him, on his arrival at the plant in the morning, that the employees had ''messed up'' by signing union cards and, upon Gargarilla's proffered denial of card signing, Norwood said that Kinney and Bazman ''screwed up'' by signing union cards and that ''the Union ain't going to help you.'' This testimony is insufficient to establish coercive interrogation as alleged in the complaint.

Stoneburgh testified that he did not attend the first meeting on September 28. Cross testified that the first meeting on that day was held in the lunchroom immediately after lunch by the brothers Kaounas with all employees present, at which John Kaounas repeated a statement that union representation would not be beneficial to the company because it would cost more to operate. He hesitantly and confusingly testified further that John Kaounas stated:

> It would—he would have to even if they had to bring in other people and pay them a Little more to do the job, we may be out on the street striking.

With respect to anything else said by either Kaounas brother during the one-half hour meeting, he testified:

> . . . they said that they didn't know how we could do this to their company and how they didn't want anybody else to run their company than them.

In cross-examination, he could recall no reference by John Kaounas to the Union's written recognitional demands, but he did recall the repeated reference to competitors' bankruptcy because of lack of ability to compete but not specifically what was said about it.

Wells also recalled that all the employees met with the Kaounas brothers at 12:30 p.m. in the plant. Of his own unprompted recollection, he recalled that John Kaounas initiated the conversation by saying that there was ''no way that the Union was going to come in'' and that if it did, the employees ''would be across the street striking because we'd have to negotiate with them.'' When the topic of job bidding was suggested by counsel, he testified that John Kaounas stated that he would ''cut back on the work to building 4 or 5 doors a month'' from the normal 8 to 10 to the point where there would be work available only for the Kaounas family, Norwood and a few others.

Kaounas denied having stated in any meeting with employees that he would not allow a union in the shop, denied but later admitted a threat to institute more difficult work rules, denied telling employees that he would intentionally slow down shop production and denied saying that a strike was inevitable. John Kaounas admitted that he convened the first meeting on September 28 because he had received the Union's demand letter and that he again asked employees if the majority claim was true. Kaounas testified that, again having received no response, he told the employees to think it over and he would meet again later after the break period, at which time he told them that they could not leave him hanging and he had to have their response.

Kaounas further admitted that after the first meeting on September 28 Bazman came to him and disclosed that he and most of the other employees had signed union representation authorization cards and he named specific card signers, including Wells, Cross, Kinney, and others. Bazman told Kaounas that the Union's claim of majority employee designation was accurate. Bazman apologized, and Kaounas expressed his appreciation and admitted in cross-examination that Bazman, a substitute foreman, had at that point convinced him that most of the employees signed union cards. Kaounas further admitted in cross-examination that during that confrontation he insisted that Bazman tell him ''yes or no'' whether he, Bazman, had actually signed a card. That admission undermines Kaounas' suggestion that the disclosures were voluntary and spontaneous.

John Kaounas admitted in cross-examination that on September 28, he repeated at both meetings on that day his statement that two unionizations caused the business failures of his competitors. The constant repetition not only undermines Gus Kaounas' claim of indifference but also undermines John Kaounas' credibility with respect to his uncorroborated claim that he assured employees that there would be no resentment against them if they merely confirmed the accuracy of the Union's majority claim. Although the employee witnesses' total recollection is handicapped, as noted above, the thrust of their testimony effectively constitutes a denial that assurances against retribution were made but, instead, alleges that John Kaounas stated or suggested the contrary, i.e., retribution for unionization. Despite their deficiencies in total recollective recall of everything Kaounas stated and the individual witnesses' failure of mutual corroboration of segments that each witness recalled, I find Wells and Cross, and to a lesser extent Stoneburgh more convincing and credible witnesses than either of the Kaounas brothers whom, for reasons already stated, are of less compelling veracity. I conclude that each employee witness truthfully recalled that part of John Kaounas' statement which impacted the consciousness of each in a way which had special significance for each, and thus that segment remained in each witnesses' memory retention. I discredit the claims of assurance of nonreprisal and find rather that the contrary was suggested in various forms, i.e., stricter rules, peremptory discharges on September 26, references to business closures, etc.

Within the foregoing context, the third employee meeting of only union card signers was summoned in the plant office on the afternoon of September 28, when, despite Bazman's revelation, John Kaounas again confronted this time only the card signers, including Stoneburgh, and repeated the competitor bankruptcy reference. It is undisputed that during that meeting the employees were again asked to publicly state

their desire for union representation and were told that each one of them could avail himself of the telephone in that room to communicate with Clark their repudiation of their union card in the presence of the Kaounas brothers and Foreman Norwood. For reasons already stated, I find more credible the employee witnesses and accept their version of the specific manner of the serial repudiations that occurred, which was not convincing and effectively contradicted by either of the Kaounas brothers. It should be noted that Respondent, for no expressed reason, failed to adduce the testimony of its Supervisor Norwood on any factual issue.

Gus Kaounas exclaimed shock that the employees would do this (seek union representation) when they were all like ''family.'' When told by John Kaounas that Clark was available for their telephone calls to ''settle this union business'' and that they should immediately start making the calls of repudiation, Wells asked for but was refused time to think it over privately. Norwood asked who the union ''ringleader'' was, and Wells said that it was group effort. John Kaounas then dialed the telephone and handed it to Bazman who was the first to repudiate and tear up his union card authorization. Each employee was then in turn directed by John Kaounas to the telephone and each proceeded to repudiate and tear up his union card as he watched. Clark told Wells during their telephone conversation that Respondent was acting improperly in arranging their mass repudiation, but Wells conformed with the repudiation for fear of being discharged. Wells conceded in cross-examination that John Kaounas did not explicitly threaten discharge for refusal to make the telephonic repudiation, but he assumed as much from the way in which Kaounas told the employees that they could either make that telephone call then or ''walk out the door.'' Cross also testified that Kaounas had made the remark.

On September 28, John Kaounas forwarded to Clark a cryptic refusal of recognition of the Union as unit bargaining agent.

E. *Postmeeting Individual Confrontations*

Cross testified that he remained in the room after he and the other card signers all had repudiated their cards and departed, and that the following events occurred. Cross initiated a confrontation with the Kaounas brothers and Norwood by telling them that working conditions had to change because employees were treated unfairly. He testified that ''there was something said about profit sharing.'' Cross' recollection was fragmented and confused, but according to him, one of these persons in some unspecified manner suggest how the preexisting profit-sharing plan ''worked or something'' and that ''we could get more later.'' Cross had been a member of the profit-sharing plan for several years. John Kaounas denied having told any individual employee that he could give them more than the Union and denied having had any individual conversations with employees about the Union. John Kaounas admitted that Wells and Cross stayed behind after the third meeting. Wells was silent on this incident. John Kaounas confirmed that he was confronted with a protest that working conditions were not ''being run right,'' and a specific complaint made about Norwood's alleged verbal abuse of employees. According to Kaounas, he explained that Norwood was responsible for employee production but Kaounas promised to investigate to determine whether or not Norwood ''was too hard on [the employees] or something'' and, if so, why. That ended the conversation. Thereafter, John Kaounas questioned Norwood who, according to Kaounas, replied that Cross had made repeated errors despite his instructions which necessitated repeated instructions.

Stoneburgh testified that immediately after the third meeting, he ''went in'' and spoke with Gus Kaounas privately and told him that he wanted union representation because he wanted medical insurance, ''not only for me,'' and that he was expecting a newborn child and he needed a pay raise. According to Stoneburgh, Gus Kaounas replied that the employees ''got it too good already,'' but was otherwise silent. Stoneburgh testified that he received a $1 pay raise 3 or 4 weeks later, the first he had ever received, but did not obtain any subsequent medical insurance coverage. In cross-examination, he admitted that, on his hire, he was told that he would become eligible for medical insurance on 1 year's employment. He voluntarily terminated his employment. He vaguely guessed that he had worked about 6 months. In cross-examination, he testified that he had not witnessed any management statements about the profit-sharing plan but reiterated his testimony that the employees were told, apparently at one of the meetings, that ''they'' told us that we ''were up for a raise until the Union, and they told us they are not going to do nothing for us until this whole deal with the Union was over with.'' He conceded that the Kaounas brothers stated that ''they could not change the terms and conditions of . . . employment while the NLRB proceedings were going on.'' Stoneburgh explained his understanding of Respondent's pay raise policy to be one of discretionary merit, and that new employees do not automatically receive a pay raise after a certain period of time.

Although the complaint alleges otherwise, Stoneburgh testified that, despite his frequent past requests, his metal shearing job remained the same and he did not receive less arduous work duties except when there was no shearing to be done. Gus Kaounas, however, testified that Stoneburgh received a pay raise after he had been ''moved up'' to the shearing position and had done a ''super job.'' It is not entirely clear from Stoneburgh's testimony whether he had started his employment as a shearer or had been ''moved up'' somewhat later. Stoneburgh's employment records reveal a hiring date of June 8, 1988, and $1 pay raise for the weekly pay period ending October 29, 1988. Payroll records for the last quarter of 1988 reveal several employees who received similar $1-per-hour raises at about the same length of service. Gus Kaounas testified, without effective contradiction, that newly hired unskilled, and inexperience employees are first assigned to such tasks as sweeping the floor, painting, and etc., and, on being taught to operate machines, read blueprints, etc., are moved up to more demanding work and given a raise.

F. *October—The Carrot*

The General Counsel alleges that in October 1988, Respondent continued its antiunion efforts with the commencement of a ''carrot and stick'' strategy, commencing with carrots. In addition to the above-discussed Stoneburgh incident, the General Counsel asserts that in mid-October, Cross, Wells, and Gargarilla were unexpectedly granted medical insurance, while Respondent was concurrently soliciting employees to ''drop the whole matter of the Union.''

The petition for representation filing was followed by the Union's filing of the first unfair labor practice charge on September 27 with respect to the discharges of that date. The U.S. Postal Service delivery receipt indicates service effected on September 29. On September 29, the second charge was filed by the Union with respect to the September 28 group meeting and service executed on October 3. The first complaint issued on November 1, 1988, and presumably, the representation case has been suspended pending disposition of these charges. The General Counsel's assertion of explicit continued antiunion solicitation is premised on the testimony of Wells. According to his generalized testimony, the Kaounas brothers ''would walk around and ask employees to drop the whole matter about the Union'' a ''couple of times'' in October, to which solicitation Wells merely shrugged. The incidents come with the Kaounases' categorical denials. Although I find Wells to be the less biased and generally more reliable because of the vagueness of his testimony, it is impossible to form any findings as to just what was stated and to what degree the statements tended to be coercive.

Cross testified that he did not participate in Respondent's medical insurance plan. He did not explain whether it had or had not previously been offered to him nor why he did not participate. He testified, without any foundation or context, that at some indeterminate date during the ''Union drive,'' Respondent was in the process of ''changing carriers'' and ''policies'' and he was given ''forms'' to fill out but that before he did so, someone, presumably a Kaounas brother, told him it was canceled. When asked ''why was that'' by counsel, he testified ''because of the Union drive.'' It was not clear whether an agent of Respondent told him that or whether it was merely his unfounded conclusion. Cross admitted that on hiring, Norwood told him and other employees that at the end of a successful year of employment they would be given the option of choosing a pay raise or medical insurance coverage and that, in fact, he was proffered that option.

Cross testified that in mid-October 1988, Gus Kaounas presented him with a medical insurance application and instructed him how to fill out the forms. Cross did so that night and returned the forms. Cross testified without context that in mid-November 1988, John Kaounas had engaged him in a conversation wherein he stated that he ''cannot do anything for us'' because his ''hands were tied . . . because the Union might think it was a bribe.'' Cross denied that he had been aware of the preexistence of a Respondent-sponsored medical insurance policy and denied that he had even been offered the option described by Wells. However, he admitted having been aware that Bazman had been offered such options. He admitted having received a raise at his first year employment anniversary.

Gargarilla testified that in early October, he had heard that all other employees were being given medical insurance coverage and therefore he asked someone in management that he needed and wanted such coverage and was told he would receive it. He voluntarily quit on October 10 prior to its effectuation.

John Kaounas testified, as Cross had admitted, to the preexistence of a medical insurance coverage option in lieu of pay raise on first anniversary of employment. He testified that Cross, Wells, and Gargarilla all asked such coverage in October 1988, and he responded that he did not understand why they did not have it already. According to him, the employees said that they did not know either. He told them he would ''go and check.'' Subsequently Gus Kaounas gave them forms. He testified that he decided not to process Cross' and Wells' applications because they were not entitled to a raise at that time whereas Gargarilla was and was eligible, i.e., the option arose, according to Respondent testimony, at the first anniversary and at any subsequent date when employees were entitled to a pay raise.

Respondent's pay raise policy will be analyzed below with respect to other alleged discriminatory conduct.

The complaint alleges, but the General Counsel fails to argue in the brief, that on or about October 11 , 1988, Respondent ''increased the benefits of employees Rick Fiddie, Chuck Wells, and Ron Kinney by admitting them into Respondent's profit-sharing plan.'' Kinney and Fiddie did not testify. Wells testified, in cross-examination, that the first time he became aware of his participation in a Respondent profit-sharing plan was when he received two participation certificates sometime in mid-November 1988, one of which was dated for a period from May 1 through December 1987 and reflected an accrual in excess of $1300.

Cross had testified, obscurely and without corroboration, of some sort of reference to profit sharing and the possibility of receiving more of something later on by John Kaounas at the third employee meeting. However, on cross-examination, he admitted the preexistence of a profit-sharing plan and his participation in it since May 1985, that he had received several statements of accrued shared profits and that nothing about that plan has changed since September 26, 1988. This testimony thus undercuts any premise for the unargued complaint allegation.

G. *October-November—The Stick*

The General Counsel argues that Respondent continued through October and November with its efforts to discourage employees' support of the Union, particularly in the areas of wages and job security. The manifestation of the ''stick'' is argued to have emerged in alleged threats concerning wage raises. The General Counsel asserts that Respondent usually gave employees raises every 6 months. The evidence cited in support of this contention is the direct examination testimony of Wells. According to Wells, during his entire tenure from 1986, he had received ''regular'' raises. With hesitation and apparent uncertainty, he testified that he received these raises, ''maybe every six months,'' but that employees in general received raises at no particular time of year. In cross-examination when asked whether there had been a preexisting set schedule for raises, he answered: ''No, not to my knowledge. It was just, you know, he'd give us a raise.'' He admitted that new employees ''might'' receive raises after 30 days, conditioned on work ability merit.

No other evidence was adduced by the General Counsel as to past practice of raise regularity. In cross-examination when asked about what ''impression'' he had of any preexisting pay raise policy, Stoneburgh replied that if an employee deserved one, he would get it, i.e., an individual merit system. Thus there is no effective, convincing credible evidence to contradict the testimony of Gus and John Kaounas to the effect that the only raises for nonprobationary employees were given pursuant to an ad hoc irregular scrutiny of the individual merit of an employee within the context of his

individual learning progress and the general state of the cost of living or when a promotion or change of work assignment warrants it, or when an evaluation is precipitated by employee request for a raise.

Given the foregoing context, we must now evaluate the alleged coercive Kaounas statements regarding pay raises. As noted above, Stoneburgh, alone in his testimony, referred to a raise withholding threat that predated the September 28 meeting. He placed this reference as having been made by both Kaounas brothers 1 or 2 weeks prior to that meeting when both of them stated that the Union was ''no good'' and there would be no periodic raises. Such confrontation could not have occurred prior to any overt union activity. Although Stoneburgh did not set forth the context of threat in his obscure testimony, I conclude that he implied it to have occurred at the first meeting. Stoneburgh's testimonial accuracy as to alleged threats, however, is extremely unreliable. He confused all three meetings, attributed to Gus Kaounas the role of spokesman which others attributed to John Kaounas. He fixed the date of the threat at an improbable time. He placed the September 26 meeting as having occurred during lunch, contradicting not only fellow witnesses but also impossible in light of the motivation for discharges. He estimated the first meeting to have lasted an improbable 3 to 4 hours, contrary to all other witnesses. He placed the first and second meetings as a ''couple'' of weeks apart, he claimed that he asserted to Gus Kaounas that he desired union representation because of a need for medical insurance when other credible evidence reveals the preexistence of such coverage and, finally, his description of a threat to withhold periodic raises is improbable in light of the nonexistence of a periodic raise practice. Although an apparently disinterested witness, Stoneburgh's testimonial recollection regarding foregoing Kaounas' confrontations is unreliable, and I must credit the Respondent's denials.

Wells testified that on some unspecified date in October, both Gus and John Kaounas, ''when they were walking round,'' told him in a private conversation Respondent ''would not be giving any pay raises'' because of the advice of their lawyer ''because they had a Union drive going on.'' Wells added that at one of those incidents, Gus Kaounas stated that the new employees would continue to receive the customary raises after their initial 30-day period of employment but that ''we wouldn't because of the Union drive.'' In cross-examination, Wells added that Gus Kaounas said that those ''who had signed cards'' would not receive raises, and that John Kaounas told him that he had ''list of people and raises they were going to give, but he couldn't do it because of the Union drive that was going on.''

After Cross had testified as to his October request for medical insurance coverage, he was asked if he had any further conversations ''about health insurance.'' He answered affirmatively and testified as follows:

> Q. And how did you come to speak with Mr. John Kaounas on that occasion [mid-November]?
>
> A. He—I don't know how it came about. It was in the morning, and we just had started talking, and he said: well, he cannot do anything for us because his hands were tied.
>
> Q. Now, was that the first thing that was said in the conversation or where there other things that were said before that do you recall?
>
> A. I don't recall. He said the Union might think it's a bribe.

When asked about further conversations about the Union with John Kaounas, Cross referred to a mid-November incident wherein John Kaounas alone approached Cross, alone, presumably in the plant, and told Cross that he could do ''nothing'' for him ''now because of the union'' and could not give him more money. According to Cross, at that point Kaounas turned and commenced walking toward Wells who was at a point 25–30 feet away, stopped, turned and motioned to him to join him at Wells' work station. Cross testified that John Kaounas told both of them that ''he could do better for them,'' and that they ''could get more money now,'' at which point Gus Kaounas joined them. John Kaounas purportedly then stated: ''I don't care if the Union is there or not, you two will not be working under the Union.'' Then Gus Kaounas allegedly stated that they (i.e., the two employees) would not be working here with or without the Union, because Respondent can ''get [the two employees out of here anytime we want because of production times.'' No explanation was offered or asked for.

The foregoing sequence of alleged incidents, if true, represents a remarkable rapid sequence of proffered ''carrots and sticks.''

In cross-examination, Wells recalled a conversation between John and Gus Kaounas and Cross at Wells' work station. According to his recollection, he and Cross were asked, ''Why we doing this, starting a union,'' and they responded that employees were being treated unfairly. According to Wells, both brothers stated that he and Cross would not be working there much longer. He fixed the event as having occurred in mid-December and referenced it to a specific event, the distribution of new employee handbook. Both Kaounas brothers categorically denied that conversation.

John Kaounas testified that during this period of time Cross uncharacteristically frequently sought him out whenever Kaounas entered the shop and asked to discuss a pay raise. Kaounas testified that he responded that he could not speak to Cross because he had ''things coming from the Labor Board,'' that he did not ''know what [to] do'' but that when he finished with his ''problem,'' i.e., the NLRB matters, he would speak to Cross. According to Kaounas, he told Cross many times that he would talk to Cross about any other major problem but not about a raise or Cross' ''case with the Union.'' Kaounas added further that there were other occasions when Cross came to him in his office and initiated conversations wherein Cross asked for and attempted to discuss a wage increase for all employees which Kaounas refused. Kaounas testified as follows:

> I said, John, first of all we can't talk. First of all, you're not in a position to talk because you had too much to drink. Second, if there is a raise to be given, when there is time to give a raise, you guys will get a raise. He keeps asking me about what you going to do with the new guys, you going to give them a raise. I said, when it's time to give them a raise through the

> normal time that I putting [sic] into this Company, they will get a raise.

Because of the lack of context in his testimony and because Cross did not explicitly rebut Kaounas on this point, I find that Cross did initiate numerous conversations wherein he asked Kaounas about whether his individual or other employees' pay raises were imminent. Admittedly, however, conversations about raises did take place.

When referred to Wells' testimony regarding alleged comments to drop the union matter, John Kaounas categorically denied the statement and testified:

> No, I didn't tell Chuck Wells to forget the Union. They're the ones that came to in [sic] and told me they wanted to—[that] they made a mistake they're the ones that came in and called the Union, not me.

Elsewhere, John Kaounas had denied having had any individual conversations concerning the Union.

In cross-examination, John Kaounas admitted that it was Bazman and only Bazman, not Wells or anyone else, who, on September 28, came to him privately and confessed that he had made a mistake and signed a union card, Kaounas grudgingly admitted, in persistent but not abusive cross-examination, that it was he who initiated all three group meetings and that it was he who telephoned Union Agent Clark and he who had the employees in his presence speak to Clark. Kaounas further admitted that he demanded of Bazman to say ''yes or no'' whether he signed a union card. Thus John Kaounas destroyed his own credibility with respect to these individual conversations with Cross and Wells and, furthermore, demonstrated his proclivity to contrive ad hoc denials and to tailor his testimony for specific incidents. It was at these points that, in self-realization of his contradictions, he vented his anger at counsel as if to somehow excuse a self-evident contradiction. Given John Kaounas' propensity to calculate and contrive answers, his self-contradictions, and his lack of spontaneity as noted above, I must credit Cross and Wells as to the foregoing testimony regarding individual confrontations with Kaounas despite the variations of their individual recollections. Gus Kaounas' lack of credibility was discussed earlier and will be discussed below. For the same reasons, he cannot be found here to have effectively corroborated John Kaounas. I find Respondent's assertion in the brief that Cross, on one or more of these occasions, was intoxicated is not supported by credible, probative evidence.

H. *Withholding Pay Raises*

The complaint alleges that in November 1988 and January 1989, John Kaounas discriminatorily withheld wage increases from its employees. The General Counsel argues in the brief that pursuant to its earlier threat, Respondent treated new employees differently from the union card signers with respect to wage increases in that, of 11 employees granted wage increases in October and November, 8 were hired after September 26, 1988, whereas only 3 of the 9 card signers received wage increases. Cross and Wells testified without foundation that in their own opinion they ought to have been, but were not granted increases after September 26. Wells terminated his employment on January 2, 1989. During his conversations with the Kaounas brothers, he was not told that he was on the list of employees due a pay raise, and there is no objective evidence to conclude that he would have been due a pay raise in the 3 months before he quit his job. Because of his length of service, Cross was already fixed at a rate substantially above other employees. There is uncontradicted evidence that he was given a $1-per-hour pay raise in August 1988. He last worked on January 3, 1989. There is no evidence to suggest that a period of less than 5 months is an unusual length of time during which no merit pay raise is given, particularly in view of the circumstances of the August pay raise, to be discussed below, and the length of time that preceded it.

Stoneburgh, Rosbury, and Kutz, all card signers, received wage increases in October and November 1988 under circumstances which warranted such raises, according to the unchallenged testimony of Gus Kaounas, i.e., job duty progression. Of the remaining card signers, Respondent's records reveal that Bazman and Kinney remained employed until at least the pay period ending December 24, 1988. Fiddie was employed until December 10, 1988, and Privett only until October 8, 1988. There is no objective evidence, statistical or otherwise, on which to infer that they were overdue a pay raise during the period after September 26 ending January 1989. The uncontroverted record evidence reveals that the new employees were granted wage increases pursuant to past practice. Although Bazman, as the substitute foreman, was paid the highest of unit employees, he did not receive a pay raise during the critical period, even though he was the first card signer to succumb to John Kaounas' interrogations of September 26 and 28. Furthermore, even Jimmy and Nick Kaounas did not receive increases.

The objective evidence as to withholding of raises neither supports the complaint allegation nor the variation advanced by counsel in the brief regardless of whether or not the Kaounas brothers threatened to withhold raises. However, Gus Kaounas admitted that in the past, on an employee request for a raise, he took the request under consideration and consulted with John Kaounas and made a determination as to raise warrantability. With the Union's advent, however, John Kaounas clearly deviated from past practice and refused such evaluations.

I. *December Work Rules*

The complaint alleges that in or about November, John Kaounas unlawfully implemented new employee work rules. The General Counsel in the brief argues that in mid-December, Respondent fulfilled its prior threats and imposed new work rules by the distribution of a previously unpublicized employee work rule handbook at a meeting with employees in November or early December.

Cross testified that in November or early December 1988, John Kaounas summoned to the plant office certain employees including Kutz, Fiddie, Kinney, Wells, and Cross, where Gus Kaounas was also present. There, he testified John Kaounas distributed an employee work rule handbook and stated, ''This is the rule book,'' which employees were instructed to read and sign an acknowledgment receipt. Cross testified that he had never before seen such a document. In cross-examination at first reading of the booklet, Cross could not identify any single rule as not having had prior existence in verbal if not written form. On second reading, he asserted

that the booklet did contain new rules not hitherto existing in any other form. Thereafter, he identified certain prohibitions regarding employee conduct which he subsequently admitted were governed by implicit commonsense rules, i.e., fighting, destruction of Respondent property, possession and consumption of alcohol and narcotics on the job. However, he explained that in the past Respondent's attitude toward such misconduct had been fairly liberal toward known but unpunished breaches of these commonsense rules. He cited as examples fighting, lunchtime timeclock entry, beer consumption and the smoking of a ''joint'' at lunchtime and on the job, as observed by Foreman Norwood. He also asserted that in the past the employees had greater freedom to challenge the instructions of the foreman by direct appeal to the Kaounas brothers, now proscribed by the rule book.

Wells was the only other employee witness to testify with respect to the handbook which he recalled as having been distributed in mid-November at an employee meeting. Wells recalled that when he distributed the handbook, John Kaounas told the employees that since they wanted a union, they would have to follow the rules. Cross did not recall the statement but it is in accord with what Kaounas stated or clearly implied on September 26. I therefore credit Wells.

Wells testified that the only rule that had not existed previously in some form or other was the attendance rule. He was not asked nor did he testify as to the past rule enforcement. However, as found above with respect to the September 26 meeting, Respondent, regardless of the existence of rules in whatever form, applied such rules with a high degree of permissiveness and discretion. I find inconsistent and not credible John Kaounas' testimony in regard to past enforcement of the handbook rules that he did not ''think'' that past enforcement had differed. Thus, assuming the truth of John Kaounas' testimony of the preexistence of an employee handbook at prior Respondent plant locations and its re-posting at the current plant, it is undisputed that the handbook had been distributed to the employees for the first time, as testified by Cross and Wells, and in the context of a new policy of stricter rule enforcement as discussed with respect to the September 26 discharge.

With respect to alcohol and drug consumption by employees, it is clear from the Kaounases' testimony that such conduct had existed in the past, certainly in the parking lot during lunchtime. Norwood was not called to contradict Cross as to open, unpunished alcohol and drug use during worktime the plant. In cross-examination, John Kaounas testified that in the afternoon employee meeting on September 28, an employee volunteered his past experience at a union shop where drug testing had been initiated pursuant to collective bargaining. Norwood looked around pointedly at several of the employees and shouted out: ''If drug testing [takes] place in here, my gosh, I won't have nobody to work. Did you hear that Guys?''

John Kaounas admitted awareness of drug use of employees but with respect to in-plant use, with some uncertainty and hesitation, he testified, i.e., ''I don't believe so.'' He stated more positively that alcohol was never consumed in the plant or during working hours. Gus Kaounas testified similarly and insisted that no alcohol consumption was tolerated in the plant during worktime. He was contradicted by the rebuttal testimony of the former employee and disinterested witness Stoneburgh, whom I credit. Stoneburgh vividly described specific management or supervisory observed incidents, including an occasion when Gus Kaounas gave him $100 in cash on a Saturday workday at 9 a.m. to go out and purchase beer for the employees, of whom almost all consumed throughout the workday, including Norwood who usually was the person who purchased and brought in the beer.

In light of my findings regarding the September 26 meeting and my conclusion of the lack of credibility John and Gus Kaounas, I credit Cross' testimony, uncontradicted by Norwood, that past commonsense rules, including those relating to worktime and workplace drug and alcohol use, were violated with impunity and with Respondent awareness.

As to the precipitating cause of the rule book distribution, John Kaounas testified that at and after the September 26 meeting, some employees, particularly Cross, had challenged him as to the existence of formal rule of conduct. He testified that ''Mr. Cross actually was the one that was pressing the issue more.'' Thus, admittedly primarily in reaction to Cross' activity on behalf of the employees, Kaounas, for the first time in Respondent's existence, distributed the rule book to the employees concurrently with the implementation of a stricter enforcement policy.

J. *December Plant Confinement Rule*

John Kaounas' discredited testimony with respect to a preexisting lunchtime plant confinement rule was discussed above. It should be further noted that the handbook, which supposedly consisted of a repository of prior rules, contained no explicit prohibition against lunchtime plant departure. At one point, Kaounas testified that the lunchtime plant confinement rule was verbal and not written. At another point, he testified that it was contained in the rule book under the topic ''lunch periods.'' That language, however, merely prohibits departure from the work station prior to the lunch period. The only posted rule, apart from the handbook, was the 1987 rule of timeclock posting which read:

> All Employees Are Required To Punch Their Time Cards Each Time They Each And Leave The Building
>
> Failure To Do So Will Cause An Automatic Deduction of 1/2 Hour For Each Day

On or shortly after December 7, 1988, John Kaounas posted, as a supplement, the following rule:

> Effective Emmediately [sic]
>
> Employees Are Not Allowed To Leave The Building For Lunch. If An Emergency Arises The Employee Must Get A Written Note From The Supervisor In Order to Leave

John Kaounas' lack of credibility as to the preexistence of a lunchtime plant confinement rule has already been determined. It should be further noted that the December 1988 notice itself implies that the rule was effective on posting, i.e., it was new. For reasons already discussed, I discredit John Kaounas' testimony that he posted the December 7, 1988 rule as a preexisting rule which the employees had become ''confused about'' on September 26. I discredit his testimony that the December 1988 rule was nothing more than

reiteration of the employee handbook, verbal rules and the 1987 timeclock rule. I discredit his testimony that the 1987 one-half-hour docking rule was intended to and was previously understood by employees to apply to plant departure. I discredit his testimony that the 1987 rule in conjunction with other rule was almost ''100%'' effective in discouraging working hour *and* lunchtime departures and that his first awareness of any noncompliance with respect to lunchtime plant departure came about at the September 26 meeting. I find that the rule was motivated by the same purpose behind the September 26 discharges and constituted a manifestation of John Kaounas' decision to implement a stricter enforcement of existing work rules and to implement a more rigidly disciplined work environment for employees who selected the Union as bargaining agent by virtue of authorization card execution and who, despite an induced repudiation, were still the subject of a pending representation claim and whose cause was perceived by Kaounas to have continued adherence by Wells and Cross, as evidenced by the foregoing confrontation.

K. *Christmas Bonuses*

The complaint alleges that John Kaounas ''set discriminatory amounts for employee Christmas bonuses.'' This allegation is not argued by the General Counsel. Although Respondent has had a history of granting employee Christmas bonuses according to uncontroverted testimony, the amounts varied per individual employees and were determined not by seniority but rather by such factors as job function, exceptional job performance and attendance. In exceptional cases, more than the usual $25–$30 was granted. Cross and Wells each received $25, $50, and $25 for the years 1986, 1987, and 1988 in that order. Cross complained to John Kaounas in 1988 that Kinney had received a $400 bonus in 1988, whereas he and Kinney did the same work. Kinney, however, was also a card signer and has had a history of large Christmas bonuses as the acknowledged highest producer in the shop, e.g., $200 in 1987 and $100 in 1986. Similarly, Fiddie's superior performance was recognized in 1988 and 1987 with bonuses of $100 each year. Fiddie retired because of a heart attack prior to Christmas 1988. Bazman received larger bonuses because of his position as substitute foreman. It is John Kaounas' unrefuted testimony that Wells and Cross received the slightly larger $50 in 1987 because of Wells' superior performance on the saw and Cross' extra miscellaneous duties. Most other employees received $25–$30 for 1988 as in prior years. Thus the evidence is insufficient on which to find a discriminatory bonus determination at Christmas 1988.

L. *Background to the January Discharge*

John Cross was hired on November 1, 1984, at $4 per hour. He became one of the highest paid nonsupervisory unit employees and, at $8 per hour, received only $1 per hour less than substitute Foreman Bazman. At Christmas 1987, he received an augmented bonus in recognition of his performance of extra work duties. Thus, at the very least, the level of his work performance and personal behavior as of January 1, 1988, was satisfactory.

In cross-examination, Cross admitted to the consumption of intoxicants at lunch on unspecified dates and unspecified frequency but claimed that he never reached a point of debilitation, e.g., he usually drank at most two 12-ounce cans of beer at lunch whereas his tolerance ran to 8 beers. He denied that Gus Kaounas ''repeatedly'' asked him to stop imbibing alcohol during lunch, but he denied only that he smoked marijuana during worktime. As noted above, beer drinking was openly condoned. Respondent's evidence, including an implied admission to John Kaounas that Cross smoked marijuana and imbibed alcohol beverages outside the plant in the parking lot, is not disputed. Cross admitted that he was asked twice by Gus Kaounas not to smoke marijuana in the plant parking lot and at lunch. He fixed that event as about 1 or 2 years before this proceeding. Respondent did not date its observations nor contradict Cross' estimate.

John Kaounas testified that he never had occasion to smell alcohol on Cross' breath during working hours but did so on unspecified dates when Cross returned from lunch. The only foundation for John Kaounas' characterization of Cross as ''drunk'' is that he smelled of alcohol. Such unfounded characterization is not of any probative value. Gus Kaounas, who was more directly in charge of production, failed to testify as to any specific instances of actual incapacity of Cross during the performance of work duties because of alcohol or drug abuse either in or outside of the plant. He testified to no observation of Cross' alcohol consumption or marijuana smoking in the plant itself.

John Kaounas' testimony reveals that when he saw marijuana-type cigarettes fall from Cross' pocket in the plant on an unspecified date and on Cross' assurance that he never smoked marijuana in the plant, Kaounas merely cautioned him that the employees ''better be careful'' because of Respondent's history with drug and alcohol related accidents in the plant. But his testimony reveals no further admonition.

John Kaounas testified that throughout his experience there had been numerous accidents caused by the use of drugs and alcohol during working hours. Only one specific incident involving a severe injury he suffered was referred to, but that occurred in 1982, long before Cross' employment. Moreover, the employee involved suspected of drug abuse was permitted to work without punishment.

On the foregoing evidence, Respondent argues in the brief that Cross had a drug and alcohol problem which caused him to leave the plant ''as often as he could'' at lunchtime to drink alcoholic beverages and which led to his discharge.

In August 1988, Cross was admittedly discharged by Gus Kaounas because Cross allegedly repeatedly failed to follow Kaounas' specific instructions in the correct manner of connecting a 3,000 pound load of steel to a lifting device. He was fired on the spot after ignoring a final order and insisting that it was correctly fastened. Gus Kaounas assumed that because Cross refused to accept his instructions, ''something was wrong'' with Cross, and he further assumed that the ''something'' was that Cross either drank alcohol or smoked marijuana in the morning. No factual foundation was laid for this assumption. Kaounas did not testify that Cross gave actual appearances of inebriation. Kaounas testified that later in the day, Cross returned and appeared to him inebriated at that time, ''cried like a little kid'' and pleaded for his job and argued that he was a good worker of long tenure and underpaid at that. According to Kaounas, compassion overwhelmed him as did his feelings for the employees with whom he had been ''working like friends together.'' Accord-

ingly, he immediately not only rehired Cross but raised his pay from $7 to $8 per hour. The payroll records reveal that raise was effectuated as of August 27, 1988. This was Cross' largest incremental raise since his initial raise after hiring and exceeded his prior 25-cent raise he received on promotion to welder from helper on March 2, 1988. Gus Kaounas testified that when he rescinded the discharge, he told Cross: ''I hope from now on you no booze, no drunk in my shop. That's your last chance, you know, you got, that's it.''

Cross conceded in cross-examination the discharge, denied the impact on safety of the way he fastened the load, conceded he asked for his job back with some money and was rehired. He was not recalled, however, to rebut Gus Kaounas as to the conversation involved in rehiring. However, his testimony as to past tolerance of drug and alcohol use, and the extent of past warnings concerning such use, constitutes an implied denial that he was warned of discharge in August 1988 for continued drug and alcohol use. In cross-examination, Cross denied having consumed alcohol or having smoked marijuana in morning before the incident and asserted he was ''cold sober.'' In view of lack of foundation for Kaounas' contrary assumption of prelunchtime intoxicants, I credit Cross. Gus Kaounas testified that the discharge was based on the insubordinate violation of his safety motivated instructions, i.e., not for alcohol or drug abuse.

Cross admitted that the preexisting absenteeism policy held an employee vulnerable to discharge on occurrence of a 3-day unexcused absence and that it was commonsense to telephone Respondent to advise of an intended absence. He testified at first that prior to September 26, there had only been one occasion when he failed to return to work from lunch and that he had not been warned about recurrent failures to return after lunch. He denied that he went to a bar *and* failed to return to work after lunch on January 19, October 10 and 13, December 25, April 1, and June 30, 1988. He explained that on June 30, 1988, he did fail to return from lunch but only after he had telephoned Kaounas and, while sober, requested to talk to him about problems he was having with his children. (That he would have requested Kaounas' advice on such a problem gives credence to the characterization of the work atmosphere as friendly prior to September 26.) He explained that the November 25 postlunch absence occurred but that he had informed Gus and John Kaounas of his need to renew his automobile license plates (tags). He admitted that he departed the plant after the 2:30 p.m. break and did not return on October 27 but asserted that he had permission to do so. Cross admitted that he had been ''talked'' to a ''couple of times'' about failures to return to work after lunch but denied that he had been ''repeatedly warned'' of discharge for continuing such behavior. Cross testified that certain occasions, his nonreturn to work after lunch was excused but, beyond the license plate incident, he could not specify other occasions. With respect to the license plant incident, he explained that when he asked permission, Kaounas suggested he go to a nearby Michigan State license plate issuing office. When he departed, Cross discovered that he had left the necessary form applications at home and so much time was involved in that round trip that it prevented his return in the afternoon. He testified without contradiction that he received no written discipline for that incident nor had he ever received any other kind of written discipline except for the September 26 incident.

Without citation of record evidence, Respondent asserts that each incident of Cross' failure to return from lunch was without notice or permission. I find no testimony to support such finding except the generalized testimony of Gus Kaounas described below. Respondent also asserts, without record citation, that such departure was disruptive to Respondent's business. I find no such supportive testimony. The only record citation for the assertion that Cross was specifically warned of discharge for continued instances of a failure to return to afternoon work is that of Gus Kaounas with respect to the safety instruction insubordination discharge, wherein Cross was admonished about ''booze'' and drug abuse in general. Nothing was said about unnoticed, unpermitted departures after lunch, in the incident did not involve that kind of behavior on which Cross was supposedly given a ''last chance.'' Furthermore, though not explicitly contradicted, the ''last chance'' warning surely was denuded of all seriousness by the simultaneous granting of a generous raise in pay. Clearly, the thrust of that discharge motivation was Gus Kaounas' momentary pique at Cross' perceived insubordination. It was not a calculated step as a progression of discipline for specific misconduct, the next level which warranted discharge. Because of the incongruity of a last chance warning with the issuance of a pay raise, I do not credit Gus Kaounas that such warning was made.

M. *The January Discharge*

Cross worked the morning shift of January 3. He testified that he had obtained the permission of John and Gus Kaounas to leave the premises at lunchtime. He admitted that he did not return to work because of some unspecified ''personal problems'' that he had to attend and that he telephoned Norwood at about 1:05 p.m. and told him this. According to Cross' uncontradicted testimony, Norwood, the admitted supervisor and agent of Respondent, told him that it was ''okay for him to see to his problems and that he was excused from working that afternoon. Further, Norwood did not even inquire as to the nature of his problems.

Cross testified that he did not return to work the next morning but that he telephoned the plant at 8 a.m. and told the secretary that he was ill but would try to arrive later in the day. However, he did not report to work. He testified that at 1 p.m. he telephoned Gus Kaounas and reported that he still felt ill and would not be able to report for work. According to Cross, Kaounas told him he needed a doctor's excuse which Cross protested that he could not afford a doctor. Cross testified that Kaounas merely said, ''Okay,'' and he would see him the next morning. Cross testified, without contradiction, that in the past he had on occasion been absent for illness and had never been asked for medical proof and that there had never been any published written rules about the matter. The employee handbook stated nothing about medical proof.

On January 5, Cross reported to the plant in the morning. He testified that, on discovering his timecard to be missing at the timeclock, he asked Norwood about it and was referred to Gus Kaounas in the office. In the office according to Cross, Gus Kaounas told him that John Kaounas had pulled Cross' card and had gone to Europe. When asked

about his job, Gus Kaounas allegedly said that he would have to wait on his brother John's return.

Cross testified that before he left the office, he accused the Kaounases of wanting to rid themselves of one of the few remaining union supporters and that Gus Kaounas stated:

> Yes, you Guys tried to screw up my company, you tried to make me run my company the way somebody else's way, not mine. You cost me too much money in lawyers.

Cross testified that he retorted that he was present and ready to work but that Gus Kaounas said that there was nothing he could do. As of that date, Fiddie, Wells, and Stoneburgh had ceased employment.

Gus Kaounas testified that Cross violated the December 1988 lunchtime plant confinement rule ''constantly'' without permission by going to the local bar or to the parking lot and getting ''booze'' or ''smoking dope'' in the parking lot, which he observed. He testified that he warned Cross a ''hundred times'' not to leave the plant at lunchtime but that Cross insisted on leaving to buy a pizza. Kaounas testified that this conduct occurred after the August discharge on unspecified dates. When pressed for a specific date, he vaguely placed one such instruction as having occurred in October or ''something like that.'' He then testified that he had given such instruction even before September 26. I discredit this for reasons already discussed. Gus Kaounas testified that on January 3, Cross came to him and said that he was going out to lunch for a pizza and that, after arguing about the possibility of getting a pizza within the one-half hour allotted unpaid lunchtime, Cross disobeyed his explicit order not to depart. Kaounas testified that he next heard from Cross 1-1/2 days later through Foreman Norwood who had transmitted Cross' notification of absence ''because he had something to do.'' Kaounas testified, without corroboration, that Norwood also told him that Cross had ''walked off the job.'' This is not likely because it was supposedly Kaounas himself who supposedly witnessed the alleged insubordinate ''walk out.''

According to Gus Kaounas, Cross appeared for work the next morning but Gus Kaounas had himself removed Cross' timecard and confronted Cross and told him that he had ''automatically quit'' and walked out of his job by having departed for lunch against Kaounas' repeated order not to leave. The next day when Cross appeared to pick up his paycheck Kaounas presented a termination form for his signature on which it stated, ''Walked out from work.'' Cross signed it but testified that he did so in order to obtain the paycheck. Kaounas insisted that he told Cross he was free to sign or not sign the document and that he even benignly suggested to Cross that they remain friends and that Cross agreed. Kaounas explained that he proffered friendship to Cross and explained to him that he did so because maybe he might return ''tomorrow'' and ask for a job again and that he ought not ''close the door'' to reinstatement. Such explanation strains credulity, given Respondent's argument that Cross was terminated because of a drug and alcohol problem related to afternoon shift absenteeism that forfeited his ''last chance'' for employment.

In cross-examination, Gus Kaounas testified that, prior to union activity, Cross had, with Kaounas' explicit approval, gone out to lunch on an occasional basis. This not only contradicts testimony as to the past frequency of departures, but is also testimony as to how it had been a preexisting policy to forbid lunchtime plant departures because of the alleged drug and alcohol problem of Cross and other employees.

In cross-examination, Gus Kaounas in further self-contradiction, testified that it was only after the union activity that Cross left the plant for lunch on a daily basis in defiance of everyone. He testified, ''John Cross, he thought he's king over there.'' Kaounas proceeded to give further contradictory testimony as to whether employees asked for permission for lunchtime plant departure. Kaounas testified in further cross-examination, however, that after the September 26 meeting Cross ''started'' to punch out when he departed for lunch in obedience to John Kaounas' statement to employees at the September 26 meeting.'' Why you guys go out to lunch without punching the card.'' (Thus, inadvertently did Gus Kaounas concede that his brother's complaint on September 26 related to punching the clock and not departure itself and that, prior to union activity, Cross did not feel obliged to punch the timeclock for lunchtime departure.) Gus Kaounas then admitted that it was after the union activity that he told employees ''from now on'' to punch the timecard for luncheon absences. Kaounas also claimed that Cross' practice of not returning from lunch also started after the union activity. Respondent's own timecard evidence contradicts Kaounas. Three of six timecard entries revealing total afternoon shift absences predate union activity and the alleged last chance warning of August 27, 1988. Cross' testimony as to the circumstances of the June 30 absence is not contradicted. His testimony as to having received and given permission for some time off on November 25 was also uncontradicted, thus leaving only evidence of total afternoon absence on October 10 and 13. His specific testimony of permission for early departure at 2:30 p.m. on October 27 was not explicitly contradicted.

In cross-examination, Gus Kaounas admitted that he had been informed that Cross had telephoned the office at least twice after his departure on January 3. Thus Cross' testimony as to telephonic notification must be credited. In cross-examination, Gus Kaounas admitted that he had had no objection to drinking alcohol during nonworktime, thus contradicting testimony that nonwork hour drinking on breaks and lunchtime was a serious problem. His lack of credibility as to nonalcoholic consumption during work hours was discussed above.

There was no evidence adduced as to whether Respondent's treatment of Cross was or was not in accord with the treatment of similar alleged misconduct of other employees or whether Cross' alleged misconduct was unique or common. No evidence was adduced to demonstrate that Respondent had discharged or even disciplined other employees for similar or any other kind of employee misconduct except for some generalized testimony of some kind of discipline to the substitute foreman for lunchtime absence which, for reasons above, I discredit, i.e., there was no such prior policy, ergo there could have be no such incident.

For the reasons elucidated above, the comparative credibility of Crodd and Gus Kaounas leaves the latter at a severe disadvantage. Furthermore, his demeanor suffered a lack of spontaneity, conviction, and sincerity comparable to that of John Kaounas. With all its faults, Cross' testimony vis-a-vis Gus Kaounas must be credited. Accordingly, I credit John

Cross' testimony as to the circumstances of his discharge and as to the postdischarge confrontation described below.

N. *Postdischarge Confrontation*

On January 10, after the last unfair labor practice charges had been filed, Cross telephoned Kaounas and asked him to send his last paycheck to him. In that conversation, Gus Kaounas abusively berated Cross for going to the ''labor Union'' and to the NLRB. He threatened Cross with an obscene manner of physical abuse and accused Cross of ''screwing up his company'' and encumbering him with lawyers' expenses.

IV. COMPLAINT ALLEGATION ANALYSIS

A. *Cases 7–CA–28487 and 7–CA–28496(1)*

1. Paragraph 10—the September 26 meeting

Paragraph 10 of the complaint involves the conduct of John Kaounas at the September 26 group meeting. Based on the foregoing factual findings, I conclude that John Kaounas ordered the employees to a group meeting wherein he expressed his adamant opposition to union representation of unit employees and implied the futility of efforts for union representation because he would not allow it and which, under the coercive atmosphere, as found created by further coercive statements to be discussed hereafter, I find to be coercive and violative of Section 8(a)(1) of the Act as alleged in subparagraph (a).

I conclude that Respondent violated the Act as alleged in subparagraph (c) by threatening employees with more onerous work rules within the context of a threat to implement more strict enforcement of previously unenforced rules and a threat to effect a more rigidly disciplined work enforcement in the event the employees chose representation by a union. Kaounas did not innocently predict a more formalized relationship. The remarks were clearly calculated to be perceived as threatened retaliation. The fact that employees were peremptorily discharged as a vivid display of what was in store for them because of their desires for third-party representation, makes untenable any contrary suggestion.

With respect to subparagraph (d), I conclude that the Respondent did violate the Act by the implied threat of plant closure if the employees chose union representation. I do not premise this finding on the uncertain testimony of Cross with respect to an explicit threat of closure by Gus Kaounas but, rather, on the foregoing findings that John Kaounas made the first of three repeated assertions that unionization led to business failures of his competitors. Within the context of all his comments, threats, and conduct then and thereafter, John Kaounas made clear Respondent's extreme, implacable opposition to unionization. The references to competitors' closure was not set forth to employees as a reasoned and carefully worded objective prediction of what might happen if Respondent acquiesced in bargaining to economic demands which would render it noncompetitive. John Kaounas did not express to employees an objective factual basis on which he based a belief ''as to demonstrably probable consequences beyond his control,'' free from a context of implicit retaliation. See *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). According to John Kaounas' own version of what he said, the statement (which was preceded and succeeded by statements of hostility to union representation) was a simplistic, stark recitation of a chronology of disaster which implied a *post hoc, ergo propter hoc* argument, i.e., business failure follows unionization; therefore it necessarily causes business closure. The context was pregnant with expressed and implied retaliatory animus. I therefore find the reiterated reference to competitor's business failures because of unionization on September 26 and 28 to have constituted a threat of Respondent's business closure if the employees chose union representation. Compare *Superior Coal Co*., 295 NLRB 439 (1989); *Marathon LeTourneau Co*., 208 NLRB 213, 222 (1974); *Hertzka & Knowles*, 206 NLRB 191, 194 (1973); *Hasbro Industries*, 254 NLRB 587 (1981).

Because of the uncertain, ambiguity and confusion of testimony with respect to subparagraphs (e) and (f) as to exactly what was said, when and by whom, I make no findings thereon. The complaint paragraph does not contain a subparagraph designated ''(b).''

2. Paragraph 11—September 27 confrontation

This paragraph alleges that on September 27, John Kaounas solicited and encouraged employees to withdraw their union support and threatened an employee for sitting next to a union adherent. The only evidence of any coercive conduct on this date relates to the unalleged conduct of Gus Kaounas whose threats on this date were substantially repeated by John Kaounas later, and for which a remedial order will be sufficient without further findings on Gus Kaounas' unalleged coercive remarks on September 27 to Wells and Rosbury in the plant parking lot.

3. Paragraph 12—September 28 John Kaounas' conduct

Subparagraphs (a) and (b) allege threats to ''bring in other individuals to perform'' unit member jobs and threats of plant closure.

Because of the imprecisions and ambiguity in the recollections of Wells and Cross as to the possibility of strikes, etc., made at the first meeting on September 28, I can premise no findings therein. As stated above, I found Wells and Cross to be essentially honest witnesses and more reliable and credible than John or Gus Kaounas despite their lack of complete, mutual corroboration of all comments made by John Kaounas. I therefore find that Kaounas, on September 28, reiterated the absolute futility of union representation efforts because there was ''no way'' it would happen, the repeated threat of closure implicit in the competitor business failure allusion, and threatened to restrict production and employment to nonunit workers and thereby cause layoffs of employees in the event the employee chose union representation. Such conduct clearly constitutes a coercive threat encompassed within the alleged violations in subparagraphs (a) and (b). I therefore find that on September 28, 1988, as alleged in subparagraphs (a) and (b) of paragraph 12 of the complaint, Respondent conveyed to employees the futility of their union representation efforts by telling them that it would never permit union representation and that it would restrict production in order to limit available work only to nonunit persons and also threatened business closure if the employees chose union representation and therefore violated Section 8(a)(1) of the Act.

Subparagraph (c) alleges the coercive solicitation of the employees' repudiation of the Union by withdrawing their union card authorizations. Respondent's arguments and citations of Board law are appropriate only to employer assistance to employees regarding union disaffiliation in a noncoercive context. The afternoon session of September 28, 1988, which was preceded and succeeded by unlawful conduct, was conducted in an atmosphere permeated with coercion. John Kaounas' conduct is not remotely comparable to an innocent polling of employees' union desires. The repeated demand for public confession of union representation support and solicitation of union repudiation and withdrawal of union cards, within the context found above, is manifestly coercive, and I find, violative of Section 8(a)(1) of the Act.

Subparagraph (d) alleges an implied promise to remedy employee grievances. The evidence in support of this allegation is based on the uncertain, fragmentary recollection of Cross as to the postmeeting confrontation with John Kaounas on September 28, which I find is insufficiently precise to support a finding thereon. Stoneburgh's testimony also fails to reveal express or implied promises to remedy grievances but, rather, suggests the opposite, i.e., conditions of employment could not be changed pending NLRB proceedings.

4. Paragraph 13—coercive interrogation by Norwood

Based on the foregoing findings of fact, I conclude that by its supervisor and agent Ron Norwood at the second meeting on September 28, Respondent coercively interrogated employees concerning union activities by demanding public disclosure of their ''ringleader.''

5. Paragraph 14—conduct by Gus Kaounas on September 28, 1988

I find insufficient, clear, and reliable evidence of Gus Kaounas' alleged statements at the September 28 meeting or on or about that date.

6. Paragraph 15—the discriminatory discharges of September 26

The factual findings reveal that Cross, Kinney, and Gargarilla were discharged as a vivid, paradigmatic demonstration of the kind of retaliatory imposition of stricter work rules and more rigidly disciplined work environment that would befall employees if they chose union representation. The discharges were thus a direct consequence of the union activities of employees in general and, therefore, violative of Section 8(a)(3) of the Act.

7. Paragraph 16—October allegations concerning Stoneburgh

The factual findings fail to support a finding that Stoneburgh received a wage increase and assignment to less arduous work assignments that were inconsistent with past practice and policy.

8. Paragraph 17—medical benefits bestowed

Because of the vagueness and uncertainty of Cross', Wells' and Gargarilla's testimony in this regard, I credit John Kaounas as to why he evaluated the three employees' eligibility for medical insurance coverage, and I find the evidence insufficient that he acted contrary to past practice in denying coverage to Cross and Wells (contrary to complaint allegation) and granted coverage to Gargarilla.

9. Paragraph 18—profit-sharing benefits

There is insufficient credible, convincing evidence that Fiddie, Kinney and Wells were admitted into Respondent's profit-sharing plan for the first time in October 1988 as alleged. The evidence reveals a longstanding practice of distribution of profit-sharing accrued benefits and fails to demonstrate any inconsistent Respondent behavior in 1988.

B. *Case 7–CA–28783*

1. Paragraph 11—November wage and benefit promises

In view of the foregoing credibility resolutions, I conclude that as part of a whiplash ''carrot and stick'' technique of union representation discouragement, John and/or Gus Kaounas, in mid-November, told employees Wells and Cross that it could not do anything ''now'' for employees, including pay raises because of the pending representation claims by the Union, they ''could do better'' for the employees who ''could get more now,'' i.e., if it were not for that unwithdrawn pending claim. I find that such statement, in effect, constitutes a promise to increase benefits and wages if the employees reject the Union and, thus, a violation of Section 8(a)(1) of the Act as alleged.

2. Paragraph 12—interrogation

During the foregoing confrontation referred to in paragraph 12, I find that John and/or Gus Kaounas threatened employees with discharge because of the union activity of employees on behalf of union representation and, in the context of the above-described promise of benefit and accompanying threat, coercively interrogated Cross and Wells by demanding to know why they were instigating union organizing activities, thus violating Section 8(a)(1) of the Act as alleged.

3. Paragraph 13—January 10 threat

The credited evidence establishes that on or about January 10, Gus Kaounas threatened to inflict on Cross, in an obscene manner, bodily injury because of his activities on behalf of and in support of the Union.

4. Paragraphs 14 and 15—threats to withhold and actual withholding of wage insurances from everybody

It is clear that an employer violates Section 8(a)(3) and (5) of the Act when, during a period of refusal to bargain with the employees' designated bargaining agent, and particularly in a context of union animus, it deviates from a past practice and policy of reviewing and granting discretionary wage increases, despite having informed the employees that it had done so because of the unresolved question concerning representation. *Guta Permold Corp.*, 289 NLRB 234 (1988); *Peabody Coal Co. v. NLRB*, 725 F.2d 357 (6th Cir. 1984). See also *Parma Industries*, 292 NLRB 90 (1988), where the employer told employees that it suspended a past practice of periodic raises for the ostensible reason of avoiding ''bribe'' accusations during a union election campaign. There, an 8(a)(1) and (3) violation was nonetheless found by the Board.

In this case, amidst a plentiful union animus context during the fall of 1988, John Kaounas told Wells that despite a ''list of'' employees who would otherwise receive immediate wage increases according to outstanding policies, some would be given because of the pendency of the NLRB petition and unfair labor practice charges, i.e., he threatened unlawful withholding of wage increases. John Kaounas further admitted that he told Cross that he would not even review Cross' request for raise increases, despite other Respondent testimony that, in the past, such request activated a review and consultation between John and Gus Kaounas. Thus John Kaounas admitted the unlawful deviation from past practice, i.e., the merit review on request because of Cross' ''case with the Union,'' and he admitted telling this to Cross.

The evidence fails to establish that any particular employee was actually denied a pay raise that otherwise would have been granted had it not been for the pendency of the petition and charges. However, the evidence does establish, and I find, that Respondent in the fall and late 1988, unlawfully told its employees that, other than new employees, the employees would not receive wage increases due to them and would not be granted discretionary merit raise reviews to which past practice and policy entitled them because of the pending demand for union recognition and the pending proceedings before the NLRB, and thereby violated Section 8(a)(1) of the Act. I find that the withholding of requested merit reviews also constituted violations of Section 8(a)(3) of the Act.

5. Paragraph 16—Christmas bonuses

The factual findings fail to support these allegations.

6. Paragraph 18—the employee handbook

The unprecedented direct distribution of an employee handbook in December 1988 was admittedly precipitated by John Cross' challenge, on behalf of his fellow employees, to John Kaounas' spurious claims of the preexistence of enforcement of certain rules. It was a concomitant part of Respondent's retaliatory conduct on September 26. I credit Cross, for reasons already discussed, that the handbook was distributed on John Kaounas' announcement to employees that because they wanted a union they would have to follow the rules. Regardless of the preexistence of the undistributed handbook and rules therein in written or verbal form, the handbook distribution and the newly instituted plant confinement rule served as a reiteration of the unlawful retaliatory conduct of September 26, i.e., the stricter and more onerous work rules, stricter enforcement of older rules and an unprecedented rigidly disciplined work environment because of union representation efforts. By such conduct Respondent violated Section 8(a)(1) and (3) of the Act as alleged.

7. Paragraphs 13 and 17—the discharge of John Cross and subsequent threat

At the hearing Respondent argued that Cross abandoned his employment and, in effect, quit his job because he saw the ''handwriting on the wall,'' i.e., that he was about to be discharged. Gus Kaounas testified that he himself removed Cross' timecard and, in effect terminated Cross, albeit characterizing an insubordinate lunchtime departure a ''walk out'' and an ''automatic quit.'' He was silent as to any prior imminent decision to discharge Cross. The credited evidence reveals the following. Cross shortly after receiving an unprecedented pay raise despite an emotional incident with Gus Kaounas, engaged in union activity. During the pendeny of the Union's claim to representation, Respondent displayed extreme union animus and engaged in unlawful acts of retaliation and discrimination. Respondent subsequently perceived Cross and Wells to be particularly identified with the Union and threatened them with loss of employment before they could enjoy the benefits of union representation if ever Respondent was subjected to that detested prospect. Cross was further perceived as a protagonist for the Union, and as one engaged in concerted, protected activities on behalf of coworkers, i.e., he ''pressed the issue'' of the work rules, thereby precipitating the handbook distribution, the pending petition and early unfair labor practices were characterized to him as ''your case with the Union,'' and he was seen as a frequent champion for pay raises not only for himself but for all the other unit employees. On the day of his January 3 afternoon absence, he had been given permission to leave by Gus Kaounas and had been explicitly given permission by Norwood not to return. When Cross called in to report illness, he was ordered to produce unprecedented medical proof of illness. He was refused employment on the false claim that he walked off his job without permission. After his discharge, he was threatened with obscene physical injury because of his having sought the assistance of the Union and the processes of the Board.

In response to the strong prima facie showing that the discharge was motivated, in part if not entirely, because of union animus, the Respondent has failed to adduce credible, convincing evidence that Cross had a drug and alcohol abuse problem which, in conjunction with an absenteeism problem, had directly precipitated his discharge which would have occurred in any event in accord with past practice and policy.

Thus I find that the General Counsel sustained the burden of proving a prima facie case and Respondent failed the burden of proving that Cross would have been discharged notwithstanding his union activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 622 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). I find that Respondent violated Section 8(a)(1) and (3) of the Act by its discriminatory discharge of John Cross on January 5, 1989, and that it violated Section 8(a)(1) of the Act by Gus Kaounas' threat to John Cross to do him obscene bodily injury because he sought the assistance of the Union and the processes of the Board.

C. *Breach of Bargaining Obligations*

The Union's attainment of majority employee designated exclusive bargaining agent by virtue of the execution of valid representation authorization cards by a majority of unit employees on September 23, 1988, is almost beyond dispute. Respondent's allusion to beer consumption in the circumstances falls far short of showing fraud or mental impairment of the card signers. I have discredited any implicit suggestion by John Kaounas that any of the employees gave him any indication that they did not stand behind their designations prior to his unlawful solicitation of their repudiations in September 28. Thus, on September 28, Respondent refused recognition of the Union following its ascertainment from the substitute foreman that the Union's claim was true

and after it unlawfully coerced employee repudiation of the Union.

Respondent's refusal of recognition occurred within the context of extreme union animus and unlawful conduct which continued to January 5, 1989, when it had, through a combination of fortuitous resignations and its unlawful discharge of Cross, achieved the reduction of known union card signers to a comfortably safe minority. The evidence firmly establishes a bad-faith refusal to recognize the Union on September 28, 1989, in violation of Section 8(a)(1) and (5) of the Act.

The Supreme Court in *Gissel*, supra, 395 U.S. at 613–614 of its decision, held that a bargaining order is appropriate under the circumstances as exist herein where the unfair labor practices were ''outrageous'' and ''pervasive'' and where, I find, as here, traditional remedies will not provide the probability of holding an uncoerced election process. The threat of plant closure itself has long been viewed by the Board as constituting a lingering and irradicable form of coercion. *Milgo Industrial, Inc*., 203 NLRB 1196 (1973); *Jimmy-Richard Co*., 210 NLRB 802, 804 (1974), enfd. 527 F.2d 803 (D.C. Cir. 1975). That conduct Respondent compounded by immediate preemptive retaliatory discharges and other egregious retribution, continuing for months thereafter until the known card signers' majority status was safely decimated.

The facts of this case convinced me that the likelihood of recidivist conduct is strong enough to preclude electoral laboratory conditions. Further, it would be a stain against justice and a mockery of the objectives of industrial labor stability for Respondent to avoid a validly imposed labor obligation merely through the natural turnover of its labor complement and the inherent delays of adjudication of its own unlawful conduct. I do not believe Respondent ought be allowed to escape such obligation by such claimed exculpation any more than it would be allowed to do so had it not bargained after a certification of union majority status on election. I therefore find that a bargaining order is a necessary remedy in the interest of justice as well as to industrial labor stability. See *Quality Aluminum Products*, 278 NLRB 338 (1986), which cites and discusses the opinion of the court of appeals in *Exchange Bank*, 264 NLRB 822 (1982), enfd. 732 F.2d 60 (6th Cir. 1984).

Accordingly, I find Respondent violated Section 8(a)(1) and (5) of the Act by its refusal to recognize and bargain with the Union on and after September 26, 1988, and by its unilateral implementation of work rules in December 1989 and its discharge of John Cross insofar as it was in pursuance of those rules.

On the foregoing findings of fact and on the entire record herein, I make the following

CONCLUSIONS OF LAW

1. All full-time and regular part-time production and maintenance employees, including truckdrivers, employed by International Door, Inc., its plant located at 8001 Ronda, Canton, Michigan, but excluding electricians office clerical employees, guard and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. On September 23, 1988, a majority of the employees of Respondent, International Door, Inc., in the appropriate unit designated and selected the Union, Local 508, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO as their representative for purposes of collective bargaining.

3. At all times since September 23, 1988, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the appropriate unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, of employment and other terms and conditions of employment.

4. The Respondent has engaged in unfair labor practices, set forth above in the analysis section of this decision, which affect commerce within the meaning of the Act.

REMEDY

Having found that Respondent engaged in violations of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully discharged John Cross, Tony Gargarilla, and Ron Kinney from September 26 to 28 and discharge John Cross again on January 5, 1989, and refused thereafter to reinstate him, recommend that Respondent be ordered to offer John Cross immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and to make John Cross, Tony Gargarilla, and Ron Kinney whole for any loss of earnings suffered as a result of its unlawful conduct by payment of a sum equal to that which they would have earned absent the discrimination, with the backpay and interest computed in accordance with the formula set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I shall also recommend that any reference to their terminations be removed from their employment records.

Inasmuch as I have found that Respondent breached its bargaining obligations under the Act by refusing to recognize and bargain with the Union and by instituting unilateral changes affecting wages, hours, terms, and conditions of employment, I recommend that Respondent be ordered to recognize and bargain with the Union and to take certain affirmative action in this regard, including rescission of new work rules unilaterally implemented in December 1988, a return to the status quo ante with respect to the enforcement of old rules, and immediate reinstatement of its past practice of reviewing an employee's eligibility for a merit pay raise, on request for such review, and grant such raise if deemed meritorious after giving notice and opportunity to bargain with the Union as to the amount of each raise, and grant retroactive increases to John Cross and/or any other employee to whom it would have given raises on a merit review had it not refused that employee's request for merit review because of the pendency of a demand for union recognition an Board proceedings. Any such raise should be computed to the extent appropriate, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, International Door, Inc., Canton, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Expressing to employee the futility of union representation efforts by telling them it will in no way permit union representation.

(b) Threatening employees with more onerous work rules, a more strict enforcement of preexisting rules or a more rigidly disciplined work environment if they choose union representation, or effectuating such threats to discourage their union activities and desires for union representation.

(c) Threatening employees with plant closure if they choose union representation.

(d) Threatening to reduce production and limit available production work to nonunit persons if they choose union representation, and thus cause layoffs.

(e) Coercing employees to repudiate and withdraw their authorizations for union representation.

(f) Coercively interrogating employees as to their own or other employees' union activities or union support.

(g) Discharging employees by discriminatory enforcement of work rules, by enforcement of unlawfully promulgated work rules, or because of their union activities and sympathies, or because of other concerted, protected, activities protected by the Act in order to discourage such activities by its employees.

(h) Promising to employees increased benefits and wages if they reject union representation.

(i) Threatening to withhold merit wage increases from employees that would have otherwise been granted were it not for the pendency of a demand for union recognition and pendency of related Board proceedings.

(j) Refusing to review employees' eligibility for merit increases, on an employee request according to past practice, because of the pendency of a demand for union recognition and pendency of related Board proceedings.

(k) Threatening employees with bodily injury because they sought the assistance of a labor organization and the processes of the Board.

(l) Refusing to recognize and bargain with its employees' designated bargaining agent for the appropriate unit of employees or unilaterally instituting new work rules or unilaterally effectuating stricter enforcement of old work rules, without notice to and opportunity for bargaining with their designated bargaining agent.

(m) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with Local 508, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO as the exclusive bargaining representative of its employees in the appropriate unit and if agreement is reached as to wages, hours, and other terms and conditions of employment, embody the understanding in a signed written document. The appropriate unit is:

> All full-time and regular part-time production and maintenance employees, includling truck drivers, employed by International Door, Inc., at its plant located at 8001 Ronda, Canton, Michigan; but excluding electricians, office clerical employees, guards and supervisors as defined in the Act.

(b) Rescind new work rules unilaterally implemented in December 1988, and return the status quo ante with respect to the enforcement of old rule and manner of discipline for violation of old rules prior to September 26, 1988.

(c) Immediately reinstate its past practice of reviewing an employee's eligibility for a merit wage increase when the employee requests one in accordance with past practice, and grant such wage raise request, if deemed meritorious, after bargaining with the Union as to the amount of each wage raise, and grant retroactive increases to John Cross and any other employee whom it would have given raises on a merit review had it not refused that employee's request for a merit review because of the pendency of a demand for union recognition and Board proceedings, to be computed in the manner set forth in the remedy section of this decisions.

(d) Offer John Cross immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make whole John Cross, Tony Gargarilla, and Ron Kinney for any loss of earnings suffered as a result of its unlawful conduct in the manner set forth in the remedy section of this decision, and remove any reference of their discharges from their work record.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Canton, Michigan facility copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''